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PRIDEAUX'S

FORMS AND PRECEDENTS

IN

CONVEYANCING

ADAPTED FOR USE UNDER LORD BIRKENHEAD'S ACTS

(INCORPORATING WOLSTENHOLME'S FORMS AND PRECEDENTS)

WITH

DISSERTATIONS AND NOTES

TWENTY-SECOND EDITION

BY

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BOTH OF LINCOLN'S INN, BARRISTERS-AT-LAW

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Dedication.

To

THE RIGHT HONOURABLE

FREDERICK EDWIN, EARL OF BIRKENHEAD

HIS MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR INDIA

FORMERLY LORD HIGH CHANCELLOR OF GREAT BRITAIN

TO WHOSE PARLIAMENTARY GENIUS THE PASSING OF THE LAW OF PROPERTY ACT, 1922, IS BY GENERAL CONSENT ATTRIBUTED.

THIS EDITION IS, BY KIND PERMISSION

RESPECTFULLY DEDICATED

BY THE EDITORS

PREFACE

TO THE TWENTY-SECOND EDITION.

THIS is an epoch-making edition, for the legal profession will, for ten years from 1st January 1926, be on their trial.

Whether the system of conveyancing without the aid of a register of title will ultimately be replaced by a system of compulsory registration of title must, in the main, depend on whether the new practice, introduced by the Law of Property Acts, 1922, 1924 and 1925, the Land Charges Act, 1925, the Settled Land Act, 1925, the Trustee Act, 1925, and the Administration of Estates Act, 1925, is made use of to the best advantage. These Acts, with the Land Registration Act, 1925, are now coming to be known collectively as "Lord Birkenhead's Acts," for he was responsible for the passing of the Parent Act of 1922, on which the Consolidating Acts are based.

It is not merely a question whether the new practice, based as it is on principles which have their counterparts under the old law, should or should not be adopted, the Acts see to that, but whether full advantage is taken of the facilities afforded of simplifying titles and improving the practice of conveyancing. For instance, if the practice of noting in abstracts the effect of official certificates of search becomes generally established this in itself must result in the saving of much unnecessary time and labour. These certificates will have to be obtained on nearly all transactions for money's worth and it will be expedient to annex them to the documents carrying out the transactions in question. It will not be worth while to attempt to carry through matters relating to legal estates by any unauthorised short cuts, for, in this branch, simplicity, beyond anything hitherto achieved by the best practice in the past, has been enjoined by the Acts themselves.

It is impossible in a new Edition, involving so many changes in practice, that mistakes should not have occurred ; the Editors will be grateful for any suggestions or comments which may be of service in the preparation of a new Edition.

It is with great regret that the Editors are unable, in this Edition, to avail themselves of the services of Mr. Reginald Beddington, who has been responsible for so many past Editions. His work in connexion with the Middlesex Hospital and other Charities, also with the Rivers Pollution Standing Committee, no longer allows him sufficient time to place his abilities at the disposal of the conveyancing branch of the profession.

The Editors have to thank Mr. Edward H. Benn, one of the Conveyancing Counsel of the Court, Mr. J. M. Easton, of the Manchester Bar, and Mr. Hugh Pollock, late of H.M. Land Registry, for reading the rough proofs and making many valuable suggestions.

The Editors are under an obligation to Sir Charles F. Brickdale, the late Chief Registrar, for so kindly inserting many of the forms and notes relating to registered land ; these will now be found under the appropriate headings in the different parts of this work.

As in past Editions, Mr. Julian Q. Henriques has made himself responsible for the Part relating to Patents.

Mr. P. W. Millard, of the Ministry of Agriculture, has also very kindly furnished forms and valuable information relating to the extinguishment of manorial incidents affecting enfranchised land.

Miss Olive C. Clapham, M.A., B.C.L., of Lincoln's Inn, Barrister-at-Law, has kindly undertaken the preparation of the Index, while the Tables of Cases and Statutes have been prepared by Mr. A. E. Williams (Clerk to Sir Benjamin Cherry), who has also given very valuable assistance throughout the work.

B. L. C.
J. R. P. M.

Lincoln's Inn,
November, 1925.

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ABBREVIATIONS.

Ad. of E. Act	Administration of Estates Act.
Agr. H. Act	Agricultural Holdings Act.
Alpe	Alpe on the Stamp Acts.
Austen-Cartmell	Austen-Cartmell on the Finance Acts.
Bkcy. Act	Bankruptcy Act.
Browne and Theobald	Browne and Theobald on Railways.
B. S. Act	Building Societies Act.
Byth & Jarm.	Bythewood & Jarman Conveyancing Precedents.
Carson	Carson's Real Property Statutes (based on Shelford R. P. S.).
Challis, R. P.	Challis on Real Property.
Ch. Trusts Act	Charitable Trusts Act.
C. C. C. Act, or Companies C. C. Act	Companies Clauses Consolidation Act.
Co. Lit	Coke upon Littleton.
Cont. Remrs. Act	Contingent Remainders Act.
Conv. Act	Conveyancing Act.
Cop. Act	Copyhold Act.
Cru. Dig. or Cruise Dig	Cruise's Digest of the Law of Real Property.
Dan. Ch. F	Daniell's Chancery Forms.
,, Ch. Pract	,, ,, Practice.
Dart	Dart on Vendors and Purchasers.
Elton	Elton on Copyholds.
Ency. Forms and Prec	Encyclopædia of Forms and Precedents.
F. Act	Forfeiture Act.
F. & R. Act	Fines and Recoveries Act.
Fin. Act	Finance Act.
Frend & Ware	Frend and Ware on Railways.
F. S. Act	Friendly Societies Act.
Gale	Gale on Easements.
General Conditions of 1925	General Conditions of Sale issued by The Law Society.
Goddard	Goddard on Easements.
Highmore	Highmore on the Stamp Acts.
Interp. Act	Interpretation Act.
Jarm.	Jarman on Wills.
Jud. Act	Judicature Act.
Judg. Act	Judgments Act.
L. Act	Lunacy Act.
L. C. Act	Land Charges Act.
L. Clauses Act	Lands Clauses Consolidation Act.
Lewin	Lewin on Trusts.

L. G. Act	Local Government Act.
Lim. Acts	Real Property Limitation Acts.
Litt.	Littleton on Tenures.
L. P. Act	Law of Property Act.
L. P. (Amend.) Act	Law of Property (Amendment) Act, 1924.
L. Q. R.	Law Quarterly Review.
L. R. Act	Land Registration Act.
L. R. R.	,, ,, Rules.
L. T. Act	Land Transfer Act.
M. R. Act	Middlesex Registry Act.
M. W. P. Act	Married Women's Property Act.
Napier	Napier, The New Land Taxes.
Norton	Norton on Deeds.
Palmer	Palmer on the Companies Act.
P. H. Act	Public Health Act.
R. Clauses Act	Railways Clauses Consolidation Act.
Rev. Act	Revenue Act.
R. P. Lim. Act	Real Property Limitation Act.
R. S. C.	Rules of the Supreme Court.
Scriv.	Scriven on Copyholds.
S. D. Act	Succession Duty Act.
S. E. Act	Settled Estates Act.
Seton	Seton's Judgments and Orders.
Shep. Touchstone	Sheppard's Touchstone.
S. L. Act	Settled Land Act.
Smith, L. C.	Smith's Leading Cases.
Sug.	Sugden on Vendors and Purchasers.
,, Pow.	Sugden on Powers.
T. Act	Trustee Act.
Tudor	Tudor's Charitable Trusts.
V. & P. Act	Vendor and Purchaser Act.
Wace	Wace on Bankruptcy.
Watk.	Watkins on Copyholds.
Wh. & Tud. L. C.	White and Tudor's Leading Cases in Equity.
Withers	Withers on Reversions.
Wms. Exors.	Williams' Law of Executors and Administrations.
Wms. V. & P.	Williams on Vendors and Purchasers.
Wolst. & Cherry	Wolstenholme and Cherry's Conveyancing Statutes.
Y. R. Act	Yorkshire Registry Act.

CHAPTER I

THE NEW ACTS.

Summary of General Provisions.

(1) *History of the Acts.*

"Lord Birkenhead's Act" and the Consolidating Acts.

The Law of Property Act, 1922 (Lord Birkenhead's Act), as amended by the Law of Property (Amendment) Act, 1924, and the six following consolidating Acts, namely, the Law of Property Act, 1925, the Settled Land Act, 1925, the Trustee Act, 1925, the Land Charges Act, 1925, the Administration of Estates Act, 1925, and the Land Registration Act, 1925, will be rightly associated with the name of the Earl of Birkenhead. But for his brilliant advocacy, backed by a command of the English language second to none, the chance of passing an omnibus Bill leading to such an epoch-making evolution in the law of property and conveyancing would have been meagre, even with the potent assistance of Lords Haldane and Buckmaster.

History.

Mr. Wolstenholme's Bill.

The germ of the scheme for the L. P. Act first appeared in Parliament in the shape of the Conveyancing Bill of 1898, based on a paper read by the late Mr. E. P. Wolstenholme, before the Juridical Society in 1862. This Bill was drafted by him with the assistance of Mr. B. L. Cherry (now Sir Benjamin Cherry) on instructions from the Law Society, and was introduced by the late Lord Davey. For years the main scheme was dropped, though, at the instance of the Law Society, various Conveyancing, Settled Land, Trustee and Married Women's Property Bills were prepared, dealing with detailed amendments. Save in the cases of the Married Women's Property Act, 1907, and the Conveyancing Act, 1911, these measures were wrecked; the Imperial Parliament could not be expected to take a sufficient interest in matters not involving any political principle; still some of the Bills were adopted by Colonial Legislatures.

Lord Haldane's Bills.

The next step was taken by Viscount Haldane, then Lord Chancellor, shortly before the War. He appointed an expert committee, over which he presided, the late Sir Philip Gregory being deputy chairman. This committee produced various Bills,

which in 1913-14 were worked into one large omnibus Bill. This Bill, it was generally admitted, was too complicated to work smoothly ; it was however a monumental piece of work and there can be no question that the work done by Lord Haldane's committee paved the way to the Bill for the Act of 1922, many of the provisions of his Bill being incorporated in that Act.

Sir Leslie Scott's Committee.

Shortly after the War the whole subject, including the Report (1909-11) of the Royal Commission on Land Transfer, and six Bills, in which Sir Claud Schuster, K.C.B., took an active interest, prepared by a small group of conveyancers at Lincoln's Inn, one of which related to intestate succession, a subject not dealt with in Lord Haldane's Bills, was again considered by the Committee over which Sir Leslie Scott (then Solicitor-General) presided, Sir Arthur Underhill, the senior conveyancing counsel of the court, acting as deputy chairman. This committee called in Mr. Cherry to act as draftsman. They recommended the adoption of the first Law of Property Bill, introduced by Lord Birkenhead in 1921. This Bill evoked considerable criticism, both within and outside Parliament, but Sir Leslie Scott ultimately had the satisfaction of piloting the Bill for the Act of 1922 through the Commons, his speech (*a*) on second reading being an exceptionally fine exposition of a highly technical matter.

Mr. Justice Romer's Committee.

Legitimate consternation would have been felt had there been any intention of allowing the Act of 1922 to come into operation as it stood. It was however recognised from the first that Lord Haldane's advice, respecting the consolidation of the statute law affected, would have to be adopted. Accordingly, when the rough drafts of the Consolidating Bills and the Amending Bill leading thereto had been prepared, Viscount Cave, then Lord Chancellor, appointed an expert committee to consider and amend the drafts, with Mr. Justice Romer as chairman, Sir Arthur Underhill again acting as deputy chairman. This committee gave an immense amount of time and labour to the drafts, which, in the forms approved by them, with insignificant exceptions in regard to points raised after that committee had reported to Viscount Haldane, then again Lord Chancellor, were on the 30th July, 1924, introduced by him in the Lords ; an act of poetic justice in view of the immense labour he had bestowed in connexion with this legislation.

(*a*) House of Commons Debates, Vol. 154.—No. 61, p. 90; now reprinted.

Passing of the Postponement, Amending and Consolidating Acts.

The Postponement, Amending and Consolidation Bills were introduced for the last time on the 9th and 18th December, 1924, respectively, by the Lord Chancellor (Viscount Cave). By a stroke of Parliamentary genius, he arranged not only for the passing of the Postponement Bill, but also of the Amendment Bill on 18th December, 1924, leaving only the Consolidating Bills to be dealt with by Parliament when it met again in February, 1925. But for the energy of Sir Claud Schuster, maintained throughout the whole proceedings, this legislative output would have been impossible.

Responsibility for drafting, &c.

An idea appears to obtain that Sir Benjamin Cherry was responsible for the drafting of all the Bills; such a thing would have been impossible. It is true that he had to sketch out the rough drafts, explain them to the different committees, and carry on many negotiations with outside bodies. Even to this there are many exceptions. For instance, Sir Frederick Liddell, K.C.B., the first parliamentary counsel, prepared the original draft of the provisions relating to copyholds, the draft of the greater part of the Administration of Estates Act, and, with Sir Charles Brickdale, the late Chief Land Registrar, the draft for the Land Registration Act. Again, Mr. A. E. Russell, one of the conveyancing counsel of the court, undertook the draft for the Settled Land Act, 1925, as severe a test of draftsmanship as could be devised, besides much arduous work in connexion with the other Acts. Also Mr. Edward H. Benn, another of the conveyancing counsel of the court, acting with Sir Charles Brickdale, produced the first rough draft of the Land Charges Act, 1925, besides being actively engaged on all the other Acts.

Then, in addition to the brilliant work done by Mr. Justice Romer, and other members of his committee, it is perhaps not generally known that Sir Arthur Underhill and Mr. Sanger of Lincoln's Inn were responsible for suggesting some of the far-reaching reforms contained in the Act of 1922, while Mr. Alfred Topham, K.C., suggested the scheme for making use of trust corporations to keep registers of notices of dealings with reversionary and other like interests.

Action of outside bodies.

Independently of members of the Legislature, many outside bodies gave most valuable assistance; for instance, from the Land Union, jealous of the reputation of landlords, came the suggestion that the court should have power to relieve a lessee on whom a notice to effect internal decorative repairs had been served, while it is common knowledge that, but for the wise

support of the Law Society and many provincial law societies, guided particularly by the advice of the late Sir Walter Trower and Sir Charles Longmore, K.C.B., the Act of 1922 could never have been passed. The action of the Law Society in this matter ought to dispose finally of any notion that solicitors, as a body, whether in initiating or opposing land legislation, do not regard the interests of their clients, the public, as being paramount.

Subsequent legislation.

Notwithstanding the great assistance received from all quarters it would be fatuous to predict that the Acts will not require amendment in the future. If members of the legal profession will take notes of cases in which difficulties arise and communicate these to the proper authority, the work of amendment will be facilitated.

General principles; text-books dealing with details.

The barest outline of general principles is all that can be attempted in this chapter; the reader is referred to Wolstenholme and Cherry's Conveyancing Statutes for a detailed examination and explanation of the Acts in regard to the general law, and to Brickdale & Stewart Wallace on the Land Registration Act, 1925, in regard to registered land.

(2) *The Act of* 1922 *as amended.*

Commencement.

The date for the commencement of the L. P. Act, 1922, was by the L. P. Act (Postponement) Act, 1924, postponed till 1st January 1926.

Parts of Act of 1922 unrepealed.

Parts of the L. P. Act, 1922, are amended by the 2nd Schedule to the L. P. (Amendment) Act, 1924, and are not reproduced by the Consolidating Acts. The parts left unrepealed are all transitional, they consist of:—

Part V (Abolition of copyhold and customary tenure),

Part VI (Extinguishment of manorial incidents), with the 12th Schedule (Effect of enfranchisement), 13th Schedule (Compensation for extinguishment of manorial incidents), 14th Schedule (Scale of stewards' compensation for loss of office) and s. 145 (Conversion of perpetually renewable leaseholds), with the 15th Schedule (Provisions relating to perpetually renewable leases and underleases).

When the compensation for the extinguishment of manorial incidents and for the conversion of perpetually renewable leaseholds into long terms has been discharged, or converted into additional rent, these provisions can be relegated to history. It is on this account that they are not reproduced in the Consolidating Acts.

The underlying principle of the Acts is to simplify the law, and to abolish all unnecessary technicalities. It follows from this that tenures are reduced to two, freeholds and leaseholds for years, including a lease from year to year.

Tenures reduced to freeholds and leaseholds for years.

(3) *Abolition of Copyholds and Customary Tenures.*

The main points to note in connexion with copyholds and customary tenures, including gavelkind and borough English and land subject to manorial incidents, are:

Main points in relation to copyholds, &c.

(1) That the Act itself, without further enfranchisement, converts the land into freehold: s. 128; leaving the manorial incidents, having a money value, to be extinguished later. The tenure thus created corresponds, in main essentials, to that acquired by a corporation taking copyhold land under compulsory powers.

(2) That, until the manorial incidents have been extinguished, dispositions of the enfranchised land must be produced to the steward of the manor for endorsement and the customary payments made: s. 129. The penalty for non-production is a serious one, for the legal estate does not pass; this means that the grantee will not be able to make title till the matter is rectified: L. P. Act, 1925, s. 42.

(3) That this conversion into freehold estates in fee simple extends to perpetually renewable copyholds: s. 135; leaving only leaseholds perpetually renewable by contract (as opposed to renewable by custom) to be dealt with by s. 145 and the 15th Schedule. That schedule extends to perpetually renewable underleases derived out of perpetually renewable copyholds.

(4) That copyholds for years without a perpetual right of renewal take effect as leaseholds for years: s. 133; and that copyholds for lives, &c., without a perpetual right of renewal are converted into leaseholds for ninety years, determinable by notice on the cesser of the lives: s. 133; L. P. Act, 1925, s. 149 (6).

(5) That manors are not destroyed, but that, even after the compensation for extinguishment of manorial incidents has been ascertained or discharged, the following rights remain vested in the lord or tenant as the case may be:—

(a) The commonable rights of tenants: 12th Sch. (4).

(b) Mineral rights: 12th Sch. (5).

(c) Franchises, royalties, markets, fairs, and sporting rights of the lord: 12th Sch. (5).

But these rights may, by agreement, be disposed of when the other manorial incidents are extinguished: 12th Sch. (7).

As regards the conflicting rights of the lord and tenant to minerals, see the Mines (Working Facilities and Support) Act, 1923, Part I.

(6) That court leet regulations remain in force, though the jurisdiction in regard to such matters is transferred to the High Court (12th Sch. (6)); liabilities under orders to maintain works are treated as land charges, and must be registered as such under the L. C. Act, 1925: 12th Sch. (6).

(7) That the true owner (*e.g.*, the absolute owner, or tenant for life of full age, trustees for sale, &c.), not the nominee on the court rolls, obtains the enfranchised land: 12th Sch. (8), as amended by the 2nd Schedule to the L. P. (Amendment) Act, 1924; the legal estate being got in by the L. P. Act, 1925, 1st Sch., and S. L. Act, 1925, 2nd Sch.

(8) That a mortgagee of copyholds obtains a long term in the land as his security in place of the fee simple (12th Sch. (1) (*f*); L. P. Act, 1925, 1st Sch. Pts. VII and VIII); see also s. 202, under which land is deemed to have been enfranchised before that Act takes effect.

(4) *Perpetually Renewable Leases and Leases for Lives.*

Main points in relation to perpetually renewable leaseholds and leaseholds for lives.

The main points to note in connexion with perpetually renewable leaseholds and leaseholds for lives at rents or granted in consideration of a fine are:—

(1) That, as respects perpetually renewable leases, a lessee takes a 2,000 years' term, an underlessee a similar term less a nominal reversion: 15th Sch., paras. 1 and 2; at the existing rent, save that fines for renewal are converted into additional rent: 15th Sch., para. 12, as amended by L. P. (Amendment) Act, 1924, 2nd Sch. Signed statements endorsed on the lease or underlease respecting agreed variations are made conclusive evidence: 15th Sch., para. 14. Compensation for the lessor's agent is treated as part of the fine (*ib.*, para. 15); disputes are determined by the Minister of Agriculture (*ib.*, para. 16); leases may be deposited at the Central Office and office copies obtained: *ib.*, para. 20.

(2) That each lessee or underlessee is only liable for rent or for breaches of covenant while the term is vested in him or his personal representatives: *ib.*, para. 11.

(3) That the lessee or underlessee is given an implied power to determine the lease (15th Sch., para. 10); while covenants to

register assignments, &c., within six months from the date of the assignment, and to produce the lease or underlease to the lessor within one year from 1st January, 1926, are also implied: *ib.*, para. 10.

(4) That existing contracts to grant perpetually renewable leases are satisfied by a demise for 2,000 years : *ib.*, para. 6.

(5) That a future contract for the grant of a perpetually renewable lease is to operate as an agreement to demise the land for 2,000 years : *ib.*, para. 7 (1).

(6) That any future contract to renew a lease for more than 60 years from the end of the lease is void: *ib.*, para. 7 (2). Reversionary leases at a rent or in consideration of a fine must take effect within 21 years from the date of the instrument creating the future term, and a contract, whether or not contained in a subsisting lease, to grant a future lease is subject to the same rule : L. P. Act, 1925, s. 149 (3). Thus a right to renew must be made exercisable within the 21 years or not at all.

Leases for lives.

(7) That a lease for lives at a rent or in consideration of a fine operates to create a term of 90 years determinable by notice : L. P. Act, 1925, s. 149 (6).

(5) *Law of Property Act*, 1925 (*Summary*).

Provisions for over-reaching equitable interests.

It is proposed to deal briefly with the provisions for over-reaching equitable interests and for giving effect to those interests at the end of this chapter, for the reader will be better able to appreciate these subjects when he has obtained a general idea of the contents of the New Acts ; subject to this, the general principles underlying the Law of Property Act, 1925, may be thus shortly summarised :—

Legal estates reduced to two.

(1) Legal estates in land are reduced to two, namely, a fee simple absolute in possession, and a term of years absolute : s. 1. These, however, include corresponding estates in easements, rentcharges, land tax and tithe rentcharge (*ib.*) ; also a charge by way of legal mortgage (s. 87) and rights of entry in respect of a legal term or annexed to a legal rentcharge : s. 1. See also s. 7 as to fees liable to be divested or terminable. All other interests, including interests terminable with life, take effect as equitable interests : *ib.* In future a legal estate will not be capable of being split up into legal life estates, remainders, &c. See also 1st Sch., Pt. I.

Powers of appointment, operate in equity.

(2) Similarly, a legal estate vested in A will not be capable of being appointed by B, for powers of appointment take effect in equity : s. 1. Thus the basis of conveyancing is shifted from

powers to estates. There are, however, exceptions to this rule. For instance, a legal mortgagee will be able to convey the fee simple or (subject to one exception) the head term affected by his mortgage : ss. 88 and 89. Also the effect of certain statutory powers (s. 7 (3)), powers of leasing (s. 8) and of vesting declarations and vesting instruments are saved, while donees of powers of attorney are encouraged to execute in the names of their principals. The main point to note is that the Statute of Uses having been repealed, powers operating thereunder, or by analogy thereto, are no longer capable of passing a legal estate.

Infants.

(3) Infants will no longer hold legal estates, either beneficially or in any other capacity : L. P. Act, 1925, ss. 19, 20 ; 1st Sch., Pt. III ; S. L. Act, 1925, ss. 26, 27 ; 2nd Sch., para. 3 ; Ad. of E. Act, 1925, s. 20, now replaced by the Jud. Act, 1925, s. 165, and repealed, *ib.*, 4th Sch.

Trusts for sale ; receipts for capital by two trustees or a trust corporation.

(4) Settled land is now kept distinct (see S. L. Act, 1925) from land held on trust for sale ; all the main provisions relating to trusts for sale are now incorporated in the L. P. Act, 1925, ss. 23 to 33 ; land passing under an intestacy will be subject to a trust for sale : Ad. of E. Act, 1925, s. 33. As a general rule, there must be at least two trustees or a trust corporation to give valid receipts for capital money arising under a trust for sale or the statutory powers : s. 27 (2). But this does not affect the power for a sole personal representative to give receipts : *ib.*, Ad. of E. Act, 1925, s. 39.

Where there is a life interest or an infant is entitled, representation will be granted either to a trust corporation or to at least two individuals as executors or administrators : Ad. of E. Act, 1925, s. 12, now replaced by the Jud. Act, 1925, s. 160 and repealed, *ib.*, 4th Sch. A discretionary power to postpone sale is implied unless a contrary intention appears : L. P. Act, 1925, s. 28. If the trustees refuse to sell or to exercise their statutory powers, or a consent cannot be obtained, the court may carry out the transaction or direct the trustees to do so : *ib.*, s. 30. Powers to overreach equitable interests created for money's worth by means of a trust for sale *ad hoc* are conferred by s. 2. This special power is fully explained in 1 Wolst. & Cherry, 11th ed., under that section, and in the notes to the precedents relating thereto, *infra*.

Abolition of undivided shares in land.

(5) Legal estates in undivided shares in land are abolished. This is effected by vesting the land, when in possession, in trustees for sale and making the beneficial interests attach to

the proceeds of sale or the rents and profits until sale : ss. 34-38; 1st Sch., Pts. IV and V ; S. L. Act, 1925, s. 26 (4) (5) (respecting an infant entitled with another person of full age), s. 36 (respecting settled land held in undivided shares).

Joint tenancies, when subjected to a trust for sale.

(6) There is nothing to prevent tenants for life of full age, trustees for sale or personal representatives from holding as joint tenants (as opposed to a tenancy in common). But where a legal estate is held in trust for or is vested in persons as joint tenants absolutely and beneficially entitled (*e.g.*, partners), it is to be treated as being held on trust for sale : L. P. Act, 1925, s. 36. Similarly, where an infant is beneficially entitled to a legal estate jointly with another person of full age : *ib.* ; for this is not settled land : S. L. Act, 1925, s. 26 (4). Without affecting beneficial interests, tenancies by entireties (there must be very few subsisting) are converted into joint tenancies : L. P. Act, 1925, 1st Sch., Pt. VI ; and the land will accordingly be held on trust for sale : s. 36.

Legal estates vested in the persons of full age entitled thereto.

(7) A new start is made in regard to legal estates in freehold, leasehold and enfranchised land. These are, by the Act itself (1st Sch., Pts. II–VIII), vested in the persons of full age who ought to hold them. For instance, in the case of enfranchised land, the true owner, not the nominees on the court rolls, acquires the legal fee simple. Again, in the case of encumbered estates, the owner of the equity of redemption acquires the fee simple or the term of years absolute, while the mortgagees are given mortgage terms. Where land is vested in trustees for sale in trust for persons absolutely entitled to the proceeds of sale, the legal estate is not taken out of the trustees : 1st Sch., Pt. II, para. 3 ; for the trust for sale is still subsisting : s. 23. Where only a contract is subsisting when the Act comes into force there must still be a conveyance to give effect to it : 1st Sch., Pt. II, para. 7 (*j*).

Changes in conveyancing practice inevitable ; effect of mistakes.

It is fatuous to suppose that conveyancing can, after the Act comes into force, be carried on in the same way as before, for a purchaser can and will insist on obtaining the legal estate : s. 42.

Still, wherever practicable, provision has been made to nullify the worst results which might arise by reason of mistakes in conveyancing.

Contracts and abstracts.

(8) The enactments relating to contracts are set out in ss. 40-50, while those affecting the preparations of abstracts are contained in s. 206 and the 6th Sch. It is expedient to note the rights conferred on purchasers by s. 42 with a view to their being concerned only with legal estates. The form of contracts will

be much shortened by making use of the General Conditions of 1925, issued by the Law Society. In the heading to each precedent of this edition a note will be found stating whether it transfers or creates a legal estate or an equitable interest. A similar note should be endorsed on the instrument to be executed. This will, in the future, greatly facilitate the preparation of abstracts. As to contracts to make a settlement, see S. L. Act, 1925, s. 11.

Conveyances. (9) Sections 51–75 of the L. P. Act, 1925, relate to conveyances. The main points to note are that in future :—

(a) a conveyance of land (including a rentcharge) will operate to pass the possession (or in the case of a rentcharge the " receipt," see s. 205 (1) (xix)) without actual entry in like manner as a bargain and sale or an appointment under the Statute of Uses operated : s. 51 ; see also as to leases, s. 149 ; and as to reservations, s. 65 ;

(b) deeds can be described according to their nature : s. 57 ;

(c) technical words will not be required to pass the fee simple : s. 60 ;

(d) documents can be drawn like Acts of Parliament : s. 61 ; for instance " month " will mean calendar month, the singular will include the plural, &c. ;

(e) legal estates can be reserved and invalid transactions can be confirmed by simple devices : ss. 65-66. These sections were rendered necessary by the repeal of the Statute of Uses.

(f) a person may convey to himself : s. 72 ;

(g) deeds must be signed, sealing alone will not be sufficient : s. 73 ;

(h) in favour of purchasers, corporation deeds attested in the prescribed manner are valid (s. 74) ; facilities are given for the execution of documents by or on behalf of corporations under powers of attorney, or when not under seal : *ib.*

Covenants. (10) Sections 76-84 relate to covenants. The points to note are that :—

(a) the usual covenants are implied in conveyances subject to rents : s. 77 ; the usual powers in these cases are conferred by s. 190 ; these provisions will greatly shorten and simplify conveyances of this nature ;

(b) no special words will be required when framing covenants relating to land, whether being restrictive covenants or

covenants relating to something not in existence at the date of the covenant: ss. 78-80; thus the word "heirs" or "assigns" will not be necessary. Indeed "heirs" is a word which will have no significance, save in a limitation to heirs by purchase: s. 132;

(c) covenants with two or more persons jointly will, if made after the Act, also take effect as if made with each of them: s. 81;

(d) covenants by a person with himself and others will take effect as if made with the others: s. 82;

(e) power is given to an official arbitrator to discharge or modify restrictive covenants in proper cases: s. 84.

Mortgages by demise or sub-demise.

(11) Sections 85-120 relate to mortgages, while the 1st Sch., Pts. VII and VIII, converts existing mortgages into mortgages by demise or sub-demise. No mortgagee of land takes a greater interest than a mortgage term, this leaves the fee simple or the head term in the mortgagor, the true owner. This alteration in the practice, bringing it into line with the real intention of the parties, under which the mortgagee has a security while a mortgagor remains the true owner, was essential to the main scheme conferring on estate owners (*i.e.*, owners of legal estates) the right to make title free from equitable interests. The greater part of the land in England and Wales is mortgaged and it is inconceivable that the owners of such land should be relegated to the position of persons entitled only to equitable interests under the new law. Under this Act the mortgagor has a legal estate instead of an equity of redemption.

But though a mortgagee only takes a mortgage term, he can and will, on a sale convey the fee simple or (subject to one exception) the head term vested in the mortgagor; the conveyance on sale will defeat any subsequent mortgage terms.

Similarly the mortgagee may acquire the fee simple or head term by possession under the Limitation Acts subject to the execution of an enlargement or vesting deed (ss. 88 (3), 89 (3)) or by foreclosure: ss. 88 (2), 89 (2).

Any attempt by a mortgagee to take the fee simple or the head term as security is rendered useless, for the purported conveyance operates only to create a mortgage term: ss. 85 (2), 86 (2).

Charges by way of legal mortgage.

Procedure has been further simplified by the power to create a new class of security, called a "charge by way of legal mortgage." Under such a charge the mortgagee is in the same position as if a mortgage term were vested in him: s. 87. No doubt

this form of security is the one which will obtain general acceptance. The removal of difficulties in connexion with mortgages by demise or subdemise rendered this possible ; the status of a legal chargee is arrived at by referring to that of a mortgagee by demise or sub-demise. It will be noted that a legal chargee is treated as if he had a legal estate : s. 1 (2) (*c*) (4). Legal estates are to have the same incidents as legal estates under the old law: *ib.*

Tacking and further advances.

The right to tack is abolished save in regard to further advances : s. 94. The same section protects the priority of further advances made to secure a current account and other further advances or pursuant to an obligation to make such advances.

Priorities in regard to puisne mortgages.

Legal mortgages, not protected by a deposit of documents, will rank according to date of registration as a land charge : s. 97 ; save in the case of registered land or land within the jurisdiction of a local deeds registry : *ib.* These puisne mortgages, even when made before the Act, should be registered as land charges, otherwise a purchaser without notice will not be affected : 1st Sch., Pt. VII, para. 6 ; Pt. VIII, para. 5 ; L. C. Act, 1925, s. 10 (1), Class C (i), (7). This reform has been rendered all the more necessary because there can now be a succession of legal mortgages affecting freeholds, just as there can be a succession of legal mortgages affecting leaseholds. At the same time the reform is in itself valuable, for it places second and subsequent mortgages on a secure footing. This is the fifth great reform.

Trusts of mortgage debts kept off the title.

Persons dealing with the land will no longer be concerned with trusts affecting a mortgage debt, notwithstanding notice : s. 113. It was the practice to keep these trusts off the title to the mortgaged land as far as practicable, but it was not always possible to do this.

Short forms of transfers and reconveyances.

Short forms of transfers and reconveyances, by endorsed receipts, are prescribed by ss. 114-115. For a form of a charge by way of legal mortgage, see 5th Sch., Form No. 1.

Rentcharges and powers of attorney.

(12) Sections 121-129 relate to rentcharges and powers of attorney. It will be possible under s. 128 to give a power of attorney to a purchaser and the persons deriving title under him, instead of merely to him and his substitutes.(*b*)

Equitable interests.

(13) Sections 130-138 relate to equitable interests ; entailed interests may be created as equitable interests in personal estate

(*b*) As to deposit of original instruments creating powers of attorney, see Jud. Act, 1925, s. 219.

in the same way as they may be in real estate, but disentailing assurances need no longer be enrolled. The rule in *Shelley's Case* is abolished and the effect of a gift to "heirs" is defined. These reforms arose from the adoption of the principle that it was expedient to assimilate the law of real and personal estate as far as practicable.

(14) The law in regard to notice of dealings with life interests and reversions in land is assimilated to that obtaining in regard to dealings with similar interests in the proceeds of sale of land held on trust for sale: s. 137; some of the difficulties arising in connexion with notices are met. This reform was adopted to prevent such dealings being rendered insecure by reason of the powers vested in a tenant for life who becomes the estate owner and trustee of settled land. To lighten the duties of trustees in regard to notices, power is given to nominate a trust corporation to keep a register of the notices received: s. 138.

Dearle v. *Hall*, 3 Russ. 1.

Life interests and reversions.

(15) Sections 139-154 relate to leases and tenancies. By s. 147 power is given to the court to give relief to a lessee, in proper cases, where notice has been given requiring him to effect internal decorative repairs. By means of such notices pressure, of an undesirable nature, has been brought to bear on lessees to force them to purchase their houses.

Leases.

Terms of years, whether taking effect in possession or on a future date, will, as from the date fixed for the commencement of the term, take effect without actual entry: s. 149.

Terms at a rent or granted in consideration of a fine will be void unless they take effect within 21 years from the date of the demise: s. 149 (3). Similarly, contracts, whether or not contained in a lease, to create a term to commence at a later date are void.

This restriction on the creation of future interests is required to prevent legal interests being created of such a nature as would seriously depreciate the value of the land as well as clog the title. The prohibited interests are nearly as objectionable as perpetually renewable leases, which have been abolished.

(16) Sections 155-160 relate to powers; some protection is given to purchasers who claim under an appointment void as a fraud on the power; the protection will not render it unnecessary to take the same precautions as have hitherto been adopted.

Powers, perpetuities, accumulations.

Sections 161-163 relate to perpetuities; only the general perpetuity rule is allowed to remain, the double possibility rule which only applied to land has been abolished: s. 161. Gifts

under any instrument which would be rendered void because an age exceeding 21 years had been fixed for vesting, take effect as if the age of 21 years had been adopted : s. 163.

Sections 164-166 relate to the restrictions on accumulations of income. Some doubts on practice points have been removed.

Married Women.

(17) Sections 167-170 relate to married women ; dispositions by them will in no case have to be made by deed acknowledged.

Lunatics.

(18) By s. 171 the court (in lunacy) is given power to direct settlements to be made of a lunatic's property ; by this means it is possible to remove any injustice which might arise because of the change in the law of intestacy.

Voidable dispositions and wills.

(19) Sections 172-174 relate to voidable dispositions and acquisitions of reversions ; and ss. 175-179 to wills. When the enactments relating to wills are consolidated, a better place can be found for these sections, all of which introduce minor novelties ; in particular, s. 176 authorises a tenant in tail in possession to dispose of entailed property by will without having previously barred the entail ; and under s. 177 a will made in contemplation of a marriage will not be invalidated by that marriage.

It will be noted in passing that wills operate in equity ; the legal estate of a testator will pass to his personal representatives, who will, in writing, assent to it passing to the person entitled : Ad. of E. Act, 1925, s. 36 ; S. L. Act, 1925, ss. 6-8.

Miscellaneous.

(20) Of the sections (180-200) relating to miscellaneous matters, those of sufficient importance to note in a general survey are :—

(a) Section 180, relating to the devolution of property of corporations sole, and to dealings when there is a vacancy in the office.

(b) Section 190, giving the remedies for non-payment of rent or breach of covenant, usually incorporated in conveyances subject to rents, not legally apportioned.

(c) Section 191, giving power to apportion and redeem rents, other than rents reserved by a lease. This will enable many titles in the North of England and in the Bristol district to be cleared of overriding rentcharges, which have become an intolerable nuisance, particularly to those whose land is affected though indemnified against them.

(d) Section 195, consolidating the law relating to equitable charges in right of judgment debts. See also s. 90 relating to the realisation of equitable charges by the court. Writs of *elegit*, now seldom employed, are not expressly

dealt with in this section; they must still be registered under the L. C. Act, 1925.

(e) Section 197, providing that registration of a memorial in a local deeds register of an instrument creating or transferring a legal estate is to operate as notice, but without prejudice to the priority of further advances secured by s. 94. In future only memorials of instruments creating or transferring legal estates will be registered at a local deeds registry: s. 11.

This provision, relating to notice, has an important bearing on puisne mortgages, see paragraph (11) *p.* 12 *supra*. In future a purchaser of land within the jurisdiction of the Middlesex or Yorkshire registers will always be well advised to make the usual search.

(f) Section 198 similarly makes registration under the L. C. Act, 1925, operate as notice of a puisne mortgage or equitable interest, in respect of which a pending action, writ, order, deed of arrangement or land charge is registered, but without prejudice to the provisions (s. 94) as to further advances. This is of great importance in connexion with the protection of puisne mortgages and equitable interests. A purchaser of a legal estate will always be well advised to obtain the usual certificates of search.

(g) Section 199, consolidating the enactments imposing restrictions on constructive notice, provides that a purchaser shall not be prejudicially affected by notice of any instrument or matter capable of registration under the L. C. Act, 1925, which under that Act is void or unenforceable against him by reason of non-registration. Thus the section in effect imposes an obligation, notwithstanding notice, to register claims under the L. C. Act.

General provisions.

Of the general provisions (ss. 201-209) a note may be made that though the Act applies (s. 201), to incorporeal "hereditaments" (defined in s. 205 (1) (ix) so as to exclude a personal inheritance) the statutory restrictions on dealings with advowsons (*c*) are unaffected: s. 201. The definitions in s. 205 of "conveyance," "estate owner," "land" "legal estates," "purchaser," "term of years absolute," and "trust corporation,"

(*c*) As to restrictions on dealing with advowsons, see 1 Williams V. & P., 3rd ed., 421 to 424; also the Benefices Act, 1898 (Amendment) Measure, 1923, see L. R. (Statutes) 1924, Measure, No. 1.

are worth noticing, as is also sub-s. 3 showing the construction to be placed on references to registration under the L. C. Act, 1925.

(6) *Settled Land Act*, 1925 (*Summary*).

The following is a brief summary of the main innovations introduced by the S. L. Act, 1925.

Vesting instruments essential to give effect to existing settlements.

(1) The first point to remember, when the Act comes into force in 1926, is that a vesting instrument (see Form No. 1, 1st Sch.) must be executed (2nd Sch., para. 1) to give effect to each existing settlement, whether made by deed or will. Until this is done no legal disposition *inter vivos* can be made of the land, save by a personal representative in whom it is vested: s. 13. There is one exception—a purchaser, without notice of a settlement, can acquire a legal estate from the estate owner: *ib.* A purchaser who has acquired land subject to family charges will be a limited owner and must either obtain a release or the execution of a vesting instrument before he can make title: *ib.*, ss. 1 (1) (v), 3, 13, 20 (1) (ix), 117 (1) (xxiv); L. P. Act, 1925, s. 42.

There must be S. L. Act trustees to execute the vesting instrument, if there are none they must be appointed, but having regard to ss. 30-33 (see also 2nd Sch., para. 3 (3)) it will seldom happen that there are no trustees, still less frequently, having regard to s. 42 of the Ad. of E. Act, 1925, will it be necessary to apply to the court under s. 34 of the S. L. Act for the appointment of trustees.

It is true that the legal estate in the settled land will, unless there has been a death or change of ownership between the commencement of the L. P. Act, 1925, and the date of the vesting instrument, have become vested in the tenant for life of full age or "statutory owner" (see s. 117 (1) (xxvi), *e.g.*, the trustees during a minority); this, however, does not render unnecessary the execution of a vesting instrument to state the person in whom the land is vested. A purchaser, unless precluded by condition (see the General Conditions of 1925), will still, in the cases mentioned in s. 110 (2), which include a vesting instrument made for giving effect to a settlement subsisting at the commencement of the Act, trace the title to the land and see whether it is expressed to be vested in the proper person and that the trustees named are the S. L. Act trustees; but, subject to these exceptions, the vesting instrument operates to keep the equitable interests off the title: s. 110. The two other

The curtain provisions.

transitional provisions in the 2nd Sch. are also of importance relating respectively to cases where at the commencement of the Act the land is vested in personal representatives or there is a minority.

Distinction introduced between public and private conveyancing.

(2) For many years a trust for sale has been employed to keep beneficial interests off the title to land, and to a limited extent the same principle was employed in the S. L. Act, 1882, for under that Act title had only to be traced to the existing tenant for life. In the case of future settlements, the beneficial interests thereunder are treated as family matters, the legal estate being the only matter which concerns the public, *i.e.*, purchasers, mortgagees and lessees of the land itself, not of equitable interests under the settlement. Accordingly all settlements of land will in future consist of two instruments, *i.e.*, the trust instrument, which will show the beneficial interests, and the vesting instrument, which will show in whom the legal estate is vested, and the trustees to whom all capital money is to be paid: ss. 4-10; 18; 72 and 110.

Subject to the exceptions mentioned in s. 110, a purchaser will only be concerned with the vesting instrument; for forms of these instruments see 1st Sch.

Act relates to legal estates.

(3) It is important to remember that the general provisions of the Act relate to the making of title to legal estates; a person entitled to an interest in remainder obviously cannot be a tenant for life within the Act. The legal estate, the subject of the Settlement (see ss. 1 (3), (4), (5); 2; 117 (1) (ix)), is to be vested in the tenant for life (ss. 19-21) or statutory owners (ss. 23, 117 (1) (xxvi)) as the trustee or trustees of the land: ss. 4-10 and 2nd Sch.

Does not apply where there is a trust for sale.

(4) The Act does not (save as respects s. 36, relating to undivided shares) apply where the land either expressly or by implication is held on an immediate trust for sale.

For instance, trusts for sale arise where:—

(a) the land is held in undivided shares in possession: s. 36; L. P. Act, 1925, ss. 34 and 38, 1st. Sch., Pts. IV-VI.

(b) an infant and a person of full age are jointly and beneficially entitled to a legal estate at the same time: s. 26; 2nd Sch., para. 3 (5); L. P. Act, 1925, s. 19, 1st Sch., Pt. III.

(c) land passes under an intestacy: Ad. of E. Act, 1925, s. 33.

Persons having the powers of a tenant for life.

(5) The class of persons having the powers of a tenant for life is extended to include—

(a) an absolute owner subject to charges or powers of charging under a settlement: s. 20 (1) (ix).

(b) a married woman entitled to a legal estate subject to a restraint on anticipation : s. 20 (1) (x).

(c) an absolute owner subject to equitable interests or powers : s. 21 ; provided that he complies with the requirements of that section.

(d) where there is no tenant for life, for instance, where there is a discretionary trust, or there is a tenant in tail under a settlement of land purchased with money provided by Parliament who cannot bar the entail, then under s. 23—

Either the person of full age on whom the powers are expressly conferred by the settlement, or,

In default of such person, the trustees of the settlement, can exercise the powers. As the tenant for life now becomes a trustee of the land, a married woman is able to exercise the powers without her husband : s. 25.

An infant is no longer a tenant for life, but during his minority the powers will be exercised either by the personal representatives while the land is vested in them and in every other case by the S. L. Act trustees: s. 26.

Where an infant and a person of full age are jointly entitled for life, then, during the minority, the person of full age is the tenant for life : s. 19 (3).

The committee or receiver of a lunatic tenant for life will exercise the powers in his name and on his behalf, but under the direction of the court or Master in Lunacy : s. 28.

The managing trustees of charity land, save where the Universities and College Estates Act, 1925, applies, are given the statutory powers by s. 29, but subject to the requisite order or consent being obtained as provided in that section.

Powers exercisable by other persons besides tenants for life.

Seeing that trustees for sale (L. P. Act, 1925, s. 28) and personal representatives (Ad. of E. Act, 1925, s. 39) are also given the statutory powers of a tenant for life, it seems that there must in almost every case be a person who will be able to make title to land, and to carry out any reasonable transaction.

S. L. Act trustees.

(6) The events in which trustees will become trustees for the purposes of the Act have been extended—

(a) By s. 30 (3), so as, in default of other qualifications, to include personal representatives under a will or an intestacy.

(b) By the 2nd Sch., para. 3 (3), so as to include persons who have been appointed by the court under s. 60 of the S. L. Act, 1882, to act on behalf of an infant.

In addition to the power (s. 34) for the court to appoint new trustees, additional powers to appoint trustees out of court are conferred—

(a) By 2nd Sch., para. 3 (1) (iv), on the parents or guardian of an infant who at the commencement of the Act was beneficially entitled to a legal estate, or would, if of full age, have had the powers of a tenant for life.

(b) By s. 42 of the Ad. of E. Act, 1925, on personal representatives holding any property in trust for an infant.

(c) By the L. P. Act, 1925, 1st Sch., Pt. III, para. 3 (i), on the parents or guardian of an infant who, at the commencement of the Act, held a legal estate in a fiduciary capacity or as mortgagee. The infant might have been a S. L. Act trustee.

Compound settlements.

The provisions of ss. 31-33, relating to trustees of compound settlements, of settlements by reference and to the continuance in office of trustees, will further reduce the number of applications to the court for the appointment of trustees, which would otherwise have been requisite.

Management during minority.

It will not be necessary to appoint expressly trustees for the purpose of managing land during a minority or pending a contingency ; the S. L. Act trustees will be able to act : s. 102.

Where no capital money arises, a transaction may be carried out though there may then be no S. L. Act trustees : s. 110 (4).

As references to a "settlement" mean the compound settlement, if there is one : s. 1 (1), s. 117 (1) (xxiv) ; it follows that the trustees who are referred to in the Act will be those of the compound settlement. See also s. 31, under which the trustees of Settlement No. 1 will be the trustees of the compound settlement, consisting of that settlement and those instruments subsequent in date or operation.

The statutory powers, extension of jurisdiction of the court.

(7) The statutory powers (s. 38, *et seq.*) conferred on a tenant for life (this includes s. 117 (1) (xxviii), a person having the powers, not being a statutory owner) or statutory owner have been extended to include all transactions which could be reasonably expected to be authorised, but the unexpected frequently happens, hence a general power to carry out any transaction relating to land with the leave of the court conferred by s. 64. This power is of great importance ; it will, in most cases, render unnecessary the addition of more than a few express powers in a realty settlement or will.

Over-reaching powers.

(8) The overreaching effect of a disposition by a tenant for life is defined in s. 72. This is a matter which will be dealt with towards the end of this chapter, but it should be noted that the matters which cannot be overreached are:—

(i) legal estates conveyed or created for securing money;

(ii) leases and fee farm grants, easements and other rights granted for value which are protected by registration under the L. C. Act, 1925, if capable of registration.

And that the interests which will be overreached will be, not only the limitations and powers of the settlement (see definition in s. 1), but an annuity within Pt. II of the L. C. Act, 1925, a limited owner's charge and a general equitable charge within that Act, notwithstanding registration thereunder.

The charges so overreached will attach to the capital money as if limited by the settlement, see also s. 75.

Protection and enforcement of equitable interests.

(9) Independently of registration under the L. C. Act, 1925, equitable interests and powers which are overreached and made to attach to the capital money are rendered safer by the provisions requiring capital money to be paid either to a trust corporation or to at least two trustees: s. 94. The rules for enforcement of equitable interests are laid down in s. 16.

Devolution on death.

(10) As the tenant for life will be the trustee of the settled land, it will on his death pass to his personal representatives, who in this case will be the S. L. Act trustees: Ad. of E. Act. 1925, s. 10 (now replaced by the Jud. Act, 1925, s. 162), and ss. 22-24; they will, by a vesting assent, transfer the land to his successor: S. L. Act, 1925, ss. 7 and 8.

(7) *The Trustee Act*, 1925 (*Summary*).

The provisions in this Act can be better dealt with in the part of this work relating to settlements, titles and appointments of new trustees. There are however a few provisions affecting dealings to which reference should be made in this chapter.

Power to leave part of purchase-money on mortgage.

(1) Power is given by s. 10 (2) to a tenant for life on the sale of a fee simple, or of a term having at least 500 years to run to arrange for not more than two-thirds of the purchase money to be left on mortgage.

Powers incidental to a trust or power to sell.

(2) The powers incidental to a trust or power to sell (s. 12) now apply whenever the trust was created: s. 69. They include a power to dispose of part of land however the division is made: s. 12 (2). But this does not authorise the creation of undivided shares. Trustees for sale have power under S. L. Act, 1925,

s. 50, as applied by L. P. Act, 1925, s. 28, to deal with surface and minerals separately, without the aid of T. Act, 1925, s. 12.

Receipts.

(3) The power to give receipts (s. 14) does not enable a sole trustee, not being a trust corporation, to give a valid receipt for money arising under a trust for sale or for capital money arising under the S. L. Act, 1925.

Devolution of trusts and powers.

(4) The personal representatives of a sole or surviving trustee will be able to act in trusts (s. 18) whenever created: s. 69. As copyholds are abolished an heir of a trustee will in no case succeed to a trusteeship.

Delegation of trusts.

(5) A trustee, including a tenant for life, is given power to delegate during absence abroad: s. 25.

Trustees not to exceed four.

(6) Four is the limit imposed in the case of trustees of settlements of land, or holding land on trust for sale where the trustees have been appointed after 1925: s. 34. This restriction was imposed to prevent land becoming unsaleable by reason of the employment of an excessive number of trustees.

Appointments of trustees.

(7) Trustees of dispositions on trust for sale and of the settlement of the proceeds of sale must, subject to an order of the court, be appointed by separate instruments: s. 35. Memoranda of the appointment of new trustees will be endorsed on vesting instruments affecting settled land and on dispositions on trust for sale: *ib.*

Implied vesting declarations.

(8) Vesting declarations are implied in proper cases: s. 40.

Powers for court to authorise dealings.

(9) In addition to the power given by s. 64 of the S. L. Act, 1925, the court is given power generally to authorise transactions in relation to trust property: s. 57. This will remove many doubts in regard to jurisdiction.

Appointment in place of S. L. Act trustees appointed by the court.

(10) Where the court has appointed S. L. Act trustees, then the person having power to appoint new trustees of the settlement may appoint new trustees when a vacancy occurs among the trustees appointed by the court: s. 64.

(8) *Land Charges Act*, 1925 (*Summary*).

Purposes served by L. C. Act, 1925.

The Land Charges Act, 1925, serves two principal purposes. First, it operates to protect (by means of notice, L. P. Act, 1925, s. 198) certain registered interests from being overreached in favour of a purchaser of a legal estate, and secondly it makes it clear that certain interests will be overreached in favour of a purchaser unless they are protected by registration.

The following is a summary of its new provisions:—

Pending actions, bankruptcies.

(1) Pending actions, as defined in s. 2, will include a petition in bankruptcy. The object is to enable a purchaser to obtain

an official certificate of search (s. 17) in regard to bankruptcy. As regards a legal estate, the filing of the petition does not, of itself, give notice of bankruptcy to a purchaser for money's worth (without extraneous notice of an act of bankruptcy): s. 3 (1) (2). The title of the trustee in bankruptcy is postponed to that of a purchaser for money's worth, claiming under a conveyance made after the registration of the pending action, unless the pending action is still registered, or the receiving order is registered under s. 6; see also the similar enactments as respects receiving orders in s. 7. The only hiatus left, is the period between the act of bankruptcy and the registration of the pending action, a dangerous period, and one which cannot properly be covered without leaving a loophole for fraud. But, as the filing of the petition no longer operates as notice, this is not a serious matter, for a purchaser in good faith without notice: Bkcy Act, 1914, s. 45. A petition must be registered as a pending action as soon as possible.

Annuities for lives or determinable on life.

(2) The annuity register, when the annuities actually registered have ceased, will be closed under s. 4; for in future annuities can be registered as general equitable charges. Annuities not so registered are void as against a creditor or purchaser: s. 5.

Writs and orders.

(3) As explained above, a receiving order is now to be treated, whether or not it is known to affect land, as an order which must be registered: ss. 6-7. See also L. P. Act, 1925, s. 195.

Re-registration of deeds of arrangement every five years.

(4) In future, deeds of arrangement must, like pending actions, writs and orders, be re-registered every five years, otherwise the registration will be spent, and they will not affect a purchaser: ss. 8-9.

Land charges.

(5) The most extensive alterations occur in reference to land charges: ss. 10-14. They are now divided into classes. Class A consists of the land charges under the Act of 1888. Class B includes charges created "otherwise than pursuant to the application of any person," thus rectifying the defect disclosed in *Reg.* v. *Land Registry*, (1890) 24 Q.B.D. 178. Court leet regulations are included: L. P. Act, 1922, 12th Sch. (6).

Class C includes:—

(i) A "puisne mortgage," *i.e.*, a legal mortgage not registered in a local deeds register and not protected by a deposit of documents relating to the legal estate.

(ii) A "limited owner's charge," *i.e.*, acquired by a tenant for life paying off a statutory charge (*e.g.*, for estate duty) out of his own money.

(iii) A " general equitable charge," *i.e.*, a charge not protected by the deposit of documents relating to the legal estate and not arising under a trust for sale or a settlement.

The reasons for these exceptions are, first, that a deposit of documents gives a sufficient security : L. P. Act, 1925, s. 13.

Secondly, that where the charge relates to an interest in proceeds of sale or under a settlement, it is already sufficiently protected by the fact that all capital money arising must be paid either to a trust corporation or to at least two individuals.

(iv) An " estate contract," *i.e.*, a contract to convey or create a legal estate. This also applies to a contract to settle a legal estate : S. L. Act, 1925, s. 11 ; see also L. P. Act, 1925, s. 200 (4).

Class D includes :—

(i) An Inland Revenue charge, *i.e.*, for duties on a death after the Act. This is another of the great reforms, for under L. P. Act, 1925, ss. 16-18, as respects unregistered land, and under L. R. Act, 1925, s. 73, as respects registered land, a purchaser will take free from the charge unless, in the case of unregistered land, a land charge is registered, and, in the case of registered land, the charge is protected on the register of title.

(ii) A " restrictive covenant," not made between a lessor and lessee, entered into after 1925. Thus it will not be sufficient merely to give notice of a restrictive covenant, but a purchaser will take free from it unless a land charge is registered. To avoid the restriction being thus made permanent, it can be modified or discharged under L. P. Act, 1925, s. 84 ; see also L. P. Act, 1922, s. 137 (2), as to restrictions for the protection of Royal Parks. As a rule covenants between lessor and lessee are not affected : L. P. Act, 1925, s. 6 ; but options to renew a lease must be registered.

(iii) " Equitable easements," *i.e.*, an easement created for an interest less than a fee simple or a term of years absolute, after the commencement of the Act, such as a personal licence, or an easement created after the Act by a person who only has an equitable interest.

Class E consists of annuities created before the Act which the annuitant has failed to register in the existing annuities register.

These will be void against a purchaser unless registered in one of the registers : s. 5. But they only refer to a very small class of annuities defined in s. 4 (5).

Registration under Companies Act.

Registration of a land charge created by a company for securing money, if registered under the Companies Act, 1908, s. 93, has effect as if registered as a land charge under this Act, thus avoiding double registration : s. 10 (5).

Registration in Yorkshire.

A general equitable charge, restrictive covenant, equitable easement or estate contract registered in the appropriate Yorkshire deeds register, has effect as if a land charge had been registered under this Act : s. 10 (6).

Puisne mortgage made before 1926.

A puisne mortgage, though created before the Act, may, even before transfer (s. 14 (2)), be registered as a land charge : s. 10 (7). This will enable the mortgagee to secure the benefit arising from his mortgage being converted into a legal mortgage : L. P. Act, 1925, 1st Sch., Pt. VII, para. 6, Pt. VIII, para. 5.

Charges by way of legal mortgage.

Land charges of Class A, if made for securing money, will take effect as charges by way of legal mortgage : s. 11. This is to facilitate realisation when the charges are not kept down.

Over-reaching provisions.

The overreaching provisions (ss. 3, 5, 7, 9, 13, 14) operate by making the charge, &c., void as against a purchaser, unless it is registered at the time when the transaction (see definition of " purchase " in s. 20 (8)) for value is completed. Registration operates as notice : L. P. Act, 1925, s. 198 ; with a special exception to enable further charges to be made with safety : *ib.*, s. 94. Other statutory powers to overreach (see, *e.g.*, L. P. Act, 1925, s. 2 ; S. L. Act, 1925, ss. 21 and 72) are not affected, even if the charge, &c., is registered, unless the statute otherwise provides : s. 22.

Land charges created before the Act.

One year from the time of conveyance of the benefit of a land charge, Class A, created before 1889, and the same period for a land charge, Class B or C, created before 1926, is allowed for registration : s. 14. As to Class E, see s. 5. No obligation is imposed to register an Inland Revenue charge, restrictive covenant or equitable easement (Class D) created before 1926, whether or not the benefit of it is transferred after that date.

Local land charges.

Local land charges (see definition in s. 15 (1) (7)) are placed on the same footing as land charges of Class B : s. 15 (2) ; save that instead of registration with the Land Registrar, the registration will be effected with the local authority, who will grant certificates of search : s. 15 (6). This is a great advance on the old practice, but it is unfortunate that certificates of search will

have to be obtained (s. 10) from the local authority as well as from the Land Registrar.

Registered land.

Save as regards local land charges, pending actions, writs, orders, deeds of arrangement and land charges will, as respects registered land, be protected by entries made under the L. R. Act, 1925, instead of by registration under the L. C. Act, 1925 : see s. 23.

(9) *Administration of Estates Act*, 1925 (*Summary*).

This Act can be better dealt with in the parts of this work relating to Wills and Intestacies, but the provisions of this Act, and the Judicature Act, 1925, affecting the practice of conveyancing are briefly summarised in this chapter.

Devolution to personal representative.

(1) All real estate (defined in s. 3 (1)) held for an interest not ceasing on the death, whether beneficially or on trust or by way of mortgage, passes on the death to the personal representative : s. 1. Also real estate appointed under a general power or under the power conferred by L. P. Act, 1925, s. 176. Trust estates include settled land : s. 3 (1) (ii).

Power for sole representative to convey.

Though a surviving or sole personal representative can under s. 2 convey real estate, still under s. 12, now replaced by the Jud. Act, 1925, s. 160, during a minority or the subsistence of a life interest, representation will be granted either to a trust corporation or to not less than two individuals. All the representatives to whom representation of the real estate (including chattels real) is granted must concur (s. 2 (2)) ; save where separate representation is granted for the purposes of a trust estate or settled land : Jud. Act, 1925, s. 155 ; Ad. of E. Act, 1925, ss. 13, 22, 24.

Separate representation.

Proving executors.

The executors who prove are the persons to make title : s. 8.

Settled land.

Where land is settled otherwise than by the testator's will, letters of administration (Jud. Act, 1925, s. 162, replacing s. 10) or probate (Ad. of E. Act, 1925, s. 22) will be granted to the S. L. Act trustees. If representation to the settled land has been granted to any other person, this can afterwards be rectified under s. 23.

Trust corporations. Legal estates outstanding in syndics.

Representation will be granted directly to trust corporations, and not through the intervention of syndics : Jud. Act, 1925, s. 161, replacing s. 14. Legal estates outstanding in syndics are vested in the trust corporations by the Act : *ib.*

Protection of purchasers and others.

Persons dealing in good faith with personal representatives *de facto* are protected, notwithstanding subsequent revocation : ss. 27 and 37.

Administration of assets.

(2) The enactments relating to administration of assets are set out in ss. 32-44 and in the 1st Sch.

Trust for sale of intestate's estate.

An intestate's estate is held on trust for sale with power to postpone the sale and to invest the net proceeds in investments authorised by statute : s. 33. The income of the estate, however invested, is from the death applicable as income : s. 33 (5).

Allhusen v. *Whittell.*

But this does not negative the rule in *Allhusen* v. *Whittell,* (1867) L. R. 4 Eq. 295 ; 36 L. J. Ch. 929.

Payment of debts and death duties.

The order for payment of debts, where the estate is insolvent, is prescribed in Pt. I of the 1st Sch. ; while if the estate is solvent, the order is prescribed by Pt. II. Death duties are unaffected : s. 53 (3).

Payment of charges.

The principle of the Real Estate Charges Acts is extended to property generally (s. 35) ; those Acts are repealed, being, with this alteration, reproduced by that section.

Assents in writing.

The law as to assents to property passing is laid down in s. 36. That section applies whether or not the testator or intestate dies before or after 1926. A legal estate will not pass without an assent in writing in favour of a named person : s. 36 (4). Doubtless the practice of making assents in writing will be applied to other interests. No stamp duty is payable in respect of an assent (s. 36 (11)) which will relate back to the death : sub-s. 2.

Notice of assent to be endorsed.

Notices of assent will be endorsed on the probate or letters of administration : sub-s. 5.

Protection of purchasers for money's worth of legal estates.

Statements by a personal representative, that he has not previously conveyed or assented, will protect a purchaser for money's worth (sub-s. 11) of a legal estate, unless notice of a previous conveyance or agreement has been endorsed : sub-s. 6.

The person for whose benefit an assent or conveyance is given will, in favour of a purchaser for money's worth, be deemed to be the proper person in whom the legal estate ought to be vested, unless a previous endorsement shows that the legal estate has been dealt with : sub-s. 7.

Bearing of assents on the curtain provisions.

Thus the practice prescribed by s. 36 is in aid of ss. 8 and 110 of the S. L. Act, 1925, and forms a material part of the scheme for erecting a curtain between the legal estate and equitable interests.

To whom assents can be made.

It will be noted that assents will be made in favour of tenants for life of full age, statutory owners, personal representa-

tives of a deceased devisee or legatee, and persons claiming under an intestacy as well as under a will or under (s. 41) an appropriation: s. 36 (1), (12). The section applies to conveyances (see Definition s. 55 (1) (iii)) as well as to assents, but, save where a legal estate is conveyed to a purchaser, a disposition by personal representatives will usually take the form of an assent, in order to avoid stamp duty.

Forms of assent.

For forms of assent, see L. P. Act, 1925, 5th Sch., Forms Nos. 8 and 9, and S. L. Act, 1925, 1st Sch., Form No. 5 (a vesting assent).

Notice of payment of debts, &c.

Notice of payment of debts, &c., will not prevent title being made to a purchaser for money's worth: sub-s. 8. This is unobjectionable, because the personal representatives may be acting during a minority or the subsistence of a life interest in the proceeds of sale: s. 39; S. L. Act, 1925, s. 110 (3).

Death duties, &c., no reason for postponing assent.

The existence of liabilities, including death duties, will be no reason for postponing an assent if reasonable arrangements are made for their discharge: s. 36 (10), see also S. L. Act, 1925, s. 8 (3), (6).

Powers of court notwithstanding an assent has been given.

The court may order sales or other transactions to be carried out to give effect to the rights of the persons interested, although an assent may have been made in favour of any person, not being a purchaser: s. 38. This section takes the place of the enactments relating to title being made by devisees or trustees, which have become obsolete, for the real estate vests in the personal representatives without any exception now that copyholds have been enfranchised.

Powers of management and for securing principal and annual sums.

It will be remembered that trustees holding on trust for sale have (L. P. Act, 1925, s. 28) been given the powers of a tenant for life and of the trustees of a settlement. Now by s. 39 the personal representatives are, until the period of distribution arrives, given, in reference to the real and personal estate:—

(a) the old powers of a personal representative in regard to personal estate, including power to raise money for purposes of administration by deposit of documents or by charge by way of legal mortgage: sub-s. 1 (i).

(b) the powers of trustees for sale, including (L. P. Act, 1925, ss. 2, 27, 35, 1st Sch., Pt. IV; S. L. Act, 1925, s. 36) power to overreach equitable interests: sub-s. 1 (ii) and (iii).

A purchaser will not be concerned to see whether there is a minority or a subsisting life interest, or whether or not the period of distribution has arrived: S. L. Act, 1925, s. 110 (3).

Thus the old theory that a personal representative represented the person of the testator or intestate and could do what he could have done if living, is, for all practical purposes, restored. This is rendered possible by the safeguards created for the protection of beneficial interests.

Annuities and principal sums.

Under s. 40 effect can be given to an annuity by creating a rentcharge, and provision can be made for securing principal sums charged on land by means of a term.

Power of appropriation in relation to the curtain provisions.

The wide power of appropriation conferred by s. 41, when exercised, will be valid in favour of a purchaser (sub-s. 8) for money's worth, who will not be concerned to see whether the requisite (sub-s. 1) consents, if any, have been given: sub-s. 7. "Real estate," s. 55 (1) (xix), includes leaseholds.

Retrospective.

The power applies to the estates of testators or intestates dying before or after the Act and to property appointed under a general power: sub-s. 9.

Stamp duty.

In order to avoid *ad valorem* stamp duty (*Re Lepine*, [1892], 1 Ch. 210, 216), on conveyances made for giving effect to an appropriation, testators will, in practice, provide that the consents required by the section shall not be necessary: sub-s. 6.

Powers of personal representatives under T. Act.

Supplementary powers are conferred on personal representatives by the T. Act, 1925: see s. 68 (17) for definition of "trustee." In particular, the powers given by ss. 15 and 22 of that Act will frequently be required in connexion with the exercise of the statutory power of appropriation.

Power to appoint trustees of infant's property.

The power given by Ad. of E. Act, 1925, s. 42, to appoint trustees of the property of an infant is inserted in this Act, in preference to the T. Act, 1925, because it is primarily designed to enable a personal representative to wind up an executorship or administratorship.

Distribution of the residuary estate of intestates.

Curtesy in regard to entailed interests, and on death of lunatic.

(3) The distribution of the "residuary estate," defined in s. 33 (4), relates to beneficial interests; hence ss. 45 *et seq.* will not be discussed in this chapter. It should, however, be noted that although for general purposes estates by the curtesy are prevented from arising in the future by s. 45, that section (see sub-s. 2) does not affect entailed interests; hence a new estate by the curtesy may still arise in equity on the death of a married woman tenant in tail: L. P. Act, 1925, s. 130 (4); *cf.* S. L. Act, 1925, s. 20 (1) (vii). It might also arise on the death of a married woman lunatic living on 1st January, 1926: Ad. of E. Act, 1925, s. 51 (2).

(10) *Land Registration Act*, 1925 (*Summary*).

The study of this Act (see Sir Charles Brickdale's book) should not be confined to those who are likely to be concerned with land in the county of London, for this Act illustrates the working of the curtain system; on that account a short summary of the Act, so far as it bears on this system, is given in this chapter.

Illustration of the curtain system.

Only "legal estates" (defined s. 3 (xi)) will be capable of being registered: s. 2. The "minor interests" referred to in that section (defined s. 3 (xv)) correspond to the equitable interests in unregistered land, and accordingly are capable of being overridden by a "registered disposition" (s. 3 (xii)) unless protected by an entry in the register.

Legal estates to be registered.

"Minor interests" correspond to "equitable interests."

The "overriding interests" (ss. 3 (xvi), 70) are the interests which, whether or not noted on the register, are treated as paramount to the registered title.

"Overriding interests."

Land (s. 3 (viii)) includes incorporeal hereditaments, such as a perpetual rentcharge, and seeing that copyholds have been enfranchised by the L. P. Act, 1922, all land in England and Wales comes within the Act.

"Land."

The estates acquired on first registration are shown in ss. 5-7; 9-12. Registration with an absolute or good leasehold title will be the rule: s. 77. Subject only to overriding interests, the proprietor will have the legal estate vested in him: s. 69.

First registration.

The powers of the proprietor (s. 3 (xx)) to transfer registered land and to create legal estates therein or legal charges thereon by registered disposition (ss. 18, 21, 25 and 27) now correspond to the powers vested in an estate owner in right of his estate. These include power to deposit the land or charge certificates with the like result as the deposit of title deeds relating to the legal estate in unregistered land: s. 66. As to persons who are treated as proprietors, see s. 37; and as to the powers of a proprietor of a charge, see s. 34.

Powers of proprietor to transfer or create legal estates by registered disposition.

The overriding effect of registered dispositions is shown by s. 20. See also as to death duties: s. 73. As to bankruptcies, s. 61; and as to notices of trusts, s. 74.

The overriding effect of registered dispositions.

Minor interests can be protected against the overriding effect of registered dispositions by means of notices, cautions, inhibitions and restrictions placed on the register: ss. 48-62. A separate certificate of search must be obtained from the local authority as to local land charges.

Protection of minor interests.

Where the owner of an overriding interest transfers or creates a legal estate, effect can be given thereto on the register: s. 71.

Dispositions by owners of overriding interests.

Disposition off the register.

Any person, whether or not being the proprietor, having a sufficient interest or power, can transfer or create minor interests by unregistered dispositions : ss. 101-109.

But minor interests capable of taking effect as legal estates can, in proper cases, be registered : s. 103.

Leases under statutory powers.

Leases under statutory powers can be granted by the donee of the power in the name of the proprietor, and when so granted can, in proper cases, be registered or noted as incumbrances : s. 104.

Mortgages protected by a specially prescribed caution.

The proprietor is given power to mortgage the land as if it were unregistered, and the mortgagee can protect the mortgage by a specially prescribed caution. Such a mortgage can be subsequently registered as a charge : s. 106.

The object of this section is to enable a temporary security to be safely created without registration, on the ground that, if early redemption is contemplated, actual registration is not required till the time for realisation arrives. Still, as *ad valorem* fees are payable for the specially prescribed caution, and a charge in any form which would comply with s. 106 can be registered under ss. 25 and 26, save that under s. 25 (2) (*b*) an interest or charge (not being registered or protected on the register and not being an overriding interest) which would have priority over the registered charge must not be disclosed, while this can be done under s. 106 (5), it seems improbable that resort will be had to the powers conferred by s. 106 in any appreciable number of cases.

Moreover, mortgages by deposit of the certificate (s. 66) will generally be sufficient as securities for temporary advances, when all fees, except one shilling for the notice, are saved.

Where a charge is registered or a mortgage is protected under s. 106 the land certificate must be left at the registry : s. 65.

Restriction on dealings off the register.

If a transaction can be carried out by a registered disposition, then, save in the case of leases granted under statutory powers and mortgages within s. 106, it must be carried out by registered disposition : s. 109.

Unnecessary deeds off the register.

Where a transaction is carried out by a registered disposition, unnecessary deeds off the register are made void : s. 39.

Restrictions to protect mortgages off the register not permitted.

A restriction to prevent the proprietor of the land, by means of a registered disposition, from defeating a legal mortgage off the register will no longer be allowed or required. A legal mortgage off the register will be impossible save under s. 106, and seeing that registered charges will either operate as charges by way of legal mortgage or by demise or sub-demise (s. 27),

no mortgage deed off the register will be required as respects registered land. All legal estates (other than mortgage terms) are got in from mortgagees : L. P. Act, 1925, 1st Sch., Pt. II ; see also L. R. Act, 1925, s. 69, under which the proprietor of the land will take and retain the legal estate, except mortgage terms and other derivative legal estates, such as rentcharges and easements held for legal estates. In the case of an overriding mortgage (*i.e.*, a mortgage paramount to the registered estate), the mortgagee will only take a mortgage term, not the registered fee simple or term created by the registered lease.

Legal estates got in from mortgagees.

Where a legal estate was left outstanding in a vendor of lands in a compulsory area by reason of not complying with s. 20 of the L. T. Act, 1897, it will be got in by virtue of first registration : s. 69 (3).

Legal estates left outstanding for want of registration.

The Limitation Acts are made applicable to registered land : s. 75. The registered estate will be held by the proprietor in trust for the person entitled, who will apply to be registered : *ib.*

Limitation Acts.

The register will be rectified where the land was formerly held in undivided shares ; the trustees for sale of the entirety will be registered as proprietors : s. 78.

Undivided shares.

Where only an undivided share is registered, it can (s. 81) be removed from the register : s. 78 (2). But the trustees for sale or persons interested in more than half the land or the income thereof may, before removal, require the trustees for sale of the entirety to be registered as proprietors free of cost : *ib.* Undivided shares cannot be dealt with on the register : sub-s. 4.

Wide powers to rectify the register are given : s. 82 ; these are rendered possible by the indemnity or guarantee provisions : ss. 83-85. It will, in particular, be noted that, where a mortgagee has been registered as proprietor of the land, instead of as proprietor of a charge or mortgage term, the register will be rectified : s. 82 (1) (*f*). The registrar cannot tell, when a simple transfer is handed in for registration, that the transaction is really a mortgage, but under L. P. Act, 1925, ss. 85 (2), 86 (2), such a transfer only operates to create a mortgage term.

Rectification of the register.

Mortgages by transfer of the registered estate rendered impossible.

If an interest in land has been registered in the name of a person who, if the land were not registered, would not have been the estate owner, then the register will be rectified : s. 82 (1). Further than that, the practice in regard to registered land will be adapted from time to time, so far as expedient to the practice obtaining with respect to land which is not registered : s. 144 (1) (xiii).

Estate owners to be registered as proprietors.

Conveyancing with or without a register of title to be assimilated.

Guarantee of title.

The main provisions guaranteeing compensation to persons (not merely proprietors) who suffer loss by relying on the register are contained in ss. 83-85; other isolated cases are dealt with as they arise in other parts of the Act. A real attempt has been made to remove the stigma, applicable to the Act of 1897, that the guarantee was illusory. For instance, the principle in *A.-G.* v. *Odell*, [1906], 2 Ch. 47; 75 L. J. Ch. 425, has been overruled: s. 83 (4). It should however be noticed that compensation for loss of minerals, by title paramount, will not be given unless there is a note in the register that the minerals are included in the title. The reason is that, unless the minerals are being worked or the abstract furnished clearly shows a title thereto, it is always possible that they may under an inclosure or enfranchisement award, or by express or implied reservation have been left outstanding in a lord of a manor or other person.

Loss of minerals.

Distinguishing feature between registered and unregistered titles.

This guarantee under which a person will either obtain his registered estate or the benefit of his charge, or compensation for the loss thereof, is one of the main distinguishing features between a registered and an unregistered title. The supporters of the non-registration system claim that experience shews that the insurance of titles to land, which are not registered, is an unnecessary luxury, for the losses incurred in working the system of private conveyancing are insignificant. This argument will be reinforced by the introduction of the system of registration of puisne mortgages as land charges. Be that how it may, there can be no question that a guarantee is almost essential to the proper working of any system of registration of title.

Settled land.

Settled land will, as hitherto, be registered in the name of the tenant for life of full age or of the statutory owners (*i.e.*, the trustees of the settlement or other persons who during a minority or when there is no tenant for life, *e.g.*, during the subsistence of a discretionary trust, have the powers of a tenant for life) or, pending a vesting assent, of the personal representatives in whom, whether on the death of a testator who creates the settlement by his will, or on the death of the last tenant for life, the land has become vested: ss. 86-92.

Instead of the tenant for life being registered because he is able to make title, he will now be registered because he has become the trustee of the legal estate in the settled land. This is in conformity with the principle that estate owners are to be registered as proprietors.

Being a trustee, the legal estate of a tenant for life will not, on his bankruptcy, vest in the bankruptcy trustee : S. L. Act, 1925, s. 103.

Inalienable rights of tenant for life to be registered as proprietor.

He has an inalienable right to have the settled land vested in him : S. L. Act, 1925, s. 106. Effect is given to this principle by L. R. Act, 1925, s. 92, where his right to be registered as proprietor is recognised. Where in 1926 the land is registered in the names of any other persons (*e.g.*, persons having a general power of appointment) the tenant for life, statutory owners or personal representatives can have the register rectified free of cost. It will be remembered that persons, having general powers of appointment, will no longer be able to appoint the legal estate.

Whether or not the title to land is registered, all capital money must be paid either to a trust corporation or to not less than two trustees or into court : s. 95. Effect will be given to this by a restriction placed on the register.

Land held on trust for sale.

All land held on trust for sale will be registered in the names of the trustees for sale : s. 94. They have an inalienable right to be so registered, and when necessary the register will be rectified free of cost : *ib.* Again, capital money arising when there is a trust for sale must be paid either to a trust corporation or to not less than two trustees, unless paid into court.

It will be remembered that trusts for sale arise when land is held in undivided shares, or an infant is entitled beneficially to a legal estate jointly with a person of full age, or where (the land not being settled land) joint tenants are entitled beneficially.

Special classes of land.

Special classes of land (*e.g.*, foreshore) and land held for charitable purposes are dealt with by ss. 96-100. See also as to charity land : s. 144 (1) (xxviii) ; S. L. Act, 1925, s. 29.

Derivative legal estates.

Legal estates in incorporeal hereditaments, including estates derived out of the fee simple, such as rentcharges and easements held for separate estates, can be registered under distinct title numbers. See definition of " land " in s. 3.

Priorities as respects dealings with minor interests.

In the case of unregistered land priorities as respects dealings with life interests, reversions and other equitable interests are provided for by ss. 137-8 of the L. P. Act, 1925. Instead of giving notice to the trustee estate owners or to a trust corporation appointed to receive notices, priority cautions or inhibitions will, in the case of registered land, be lodged under s. 102 (2). These will not operate to restrain registered dispositions by the proprietor : s. 144 (1) (xxii).

Contracts for sale, &c., of registered land.

The stipulations implied between vendor and purchaser will be found in s. 110. These, where conflicting with the general law relating to unregistered land, will override it; in other respects they are supplementary. The General Conditions of 1925, when incorporated in a contract, are thereby made applicable to registered land.

Compulsory registration of title.

Sections 120-125 enact the new code, giving power to make Orders in Council, requiring the title to land, within the named area, to be registered on a sale.

Orders so made (s. 120 (1)) do not affect—

(a) incorporeal hereditaments;

(b) mines held apart from the surface;

(c) land parcel of and included in the sale of a manor as such, *e.g.*, waste land.

The orders (s. 120 (2)) may be made—

(a) at any time at the instance of a county or borough council, under s. 121;

(b) after ten years from 1st January, 1926, in other cases, under s. 122.

The trial period.

The trial period of ten years is designed to allow the two systems of conveyancing, with and without a register, to be tested against each other. A public enquiry can be demanded under s. 122, at which the working of the two systems can be investigated.

The tests.

If and when an enquiry is held, the tests will doubtless relate to—

(i) Comparative costs.

(ii) Time to complete transactions.

(iii) Smooth working and freedom from mistakes or fraud.

Whichever system proves its superiority ought to be ultimately successful; the chances of success of the non-registration system will depend on the efforts of the legal profession. But in any case, many years must elapse before the titles to all the land in England and Wales can be placed on a register.

Penalty for non-registration in a compulsory area.

Conveyances on sale of freehold land, leases for forty years and upwards, and assignments on sale of terms having at least forty years to run, will not be effectual to pass a legal estate, unless application is made to register the title within two months from date, or within any authorised extension: s. 123 (1).

This is a serious penalty, for the want of the legal estate now means that a good title cannot be given.

If the title is ultimately registered, dealings taking place between the date of the conveyance or lease and the date of registration (the latter is fixed from the time of an effective application to register) can be carried out as if first registration had been effected before the dealing : s. 123 (2).

"Sale."

" Sale " does not include an exchange unless equality money is paid, nor an enfranchisement or extinguishment of manorial incidents, nor a surrender of a term where it is to be merged : s. 123 (3).

(11) *The Statutory Overreaching Provisions.*

The curtain.

The foregoing summaries of Lord Birkenhead's Act and the Consolidating Acts will be sufficient to enable the reader to appreciate the effect of the provisions enabling an estate owner, in favour of a purchaser of a legal estate, to convey free from the equitable interests and powers which affect it and are shifted to the proceeds. These provisions are not only material to the purchaser, but must be understood by any person preparing an abstract, for it will not be proper (subject to the exception mentioned in S. L. Act, 1925, s. 110 (2) proviso ; see, however, the General Conditions of 1925), to include therein an instrument relating only to interests and powers which will be overreached : L. P. Act, 1925, s. 10.

Overreaching legal estates.

It must not be understood that the overreaching provisions are exclusively confined to displace or shift equitable interests. For instance, legal mortgage terms belonging to subsequent mortgagees can and will be overreached when a prior mortgagee exercises his powers : L. P. Act, 1925, ss. 88, 89, 104.

Also a tenant for life will overreach, as part of the limitations of a settlement, a legal term of years created, for family purposes, before the date of the settlement (S. L. Act, 1925, ss. 1 (1), (v) ; 72) ; (though in this case the term may by a vesting instrument be converted into an equitable term (S. L. Act, 1925, s. 9 (2) ; 2nd Sch., para 1 (6)). Equitable interests and powers are the matters mainly affected.

Purchaser without notice.

"Puisne mortgages."

Legal estates have the same incidents as the old legal estates had before 1926 (L. P. Act, 1925, s. 1 (4)), that is to say, a purchaser of a legal estate without notice of an equity takes free from the latter. Among the equitable interests must be classed a " puisne mortgage " until it is registered as a land charge : L. C. Act, 1925, s. 10 (1) class C ; (7). For though in the case of a mortgage made before 1926 it may be converted

into a legal mortgage (L. P. Act, 1925, 1st Sch., Pt. VII, para. 6; Pt. VIII, para. 5) it derives no protection therefrom till a land charge is registered: *ib.* Where a puisne mortgage is made after 1926, it will rank according to its date of registration: L. P. Act, 1925, s. 97. Either the mortgagee must get the title deeds (s. 13) or the mortgage must be registered in a local deeds register or as a land charge. Mortgages of registered land will either be entered or protected on the register.

Interests created before 1926, notice material.

The L. P. Act, 1925, s. 2 (5), sets out the interests, created before 1926, which a purchaser will only take subject to if he has notice thereof and they are not otherwise overreached. Thus a restrictive covenant or an equitable easement, when created before 1926, will not be void if not registered as a land charge.

Puisne mortgages and estate contracts, made before 1926, are not required to be registered as land charges till they are transferred or assigned; though, as previously explained, it is expedient to register all puisne mortgages, as land charges, as soon as possible.

As to notice, see L. P. Act, 1925, ss. 197-199; T. Act, 1925, ss. 27 (2) (*b*) and 28.

Overreaching conveyances, notwithstanding notice.

The conveyance by approved trustees will overreach the equities (these may have been created *before* the date of the trust for sale or the settlement) notwithstanding that the purchaser has notice thereof:—

Under the S. L. Act.

(1) If it can so operate under the S. L. Act, 1925, the capital money being paid either to a trust corporation or to at least two trustees or into court: L. P. Act, 1925, s. 2 (1) (i).

The fact that all interests under compound settlements (S. L. Act, 1925, s. 31), can be overreached is already well known. This affords a good example of an interest created *before* the date of the settlement becoming liable to be overreached. Section 72 of that Act (effect of conveyances) has been discussed *supra*, and it will be remembered that the overreaching powers are not prejudiced by registration under the L. C. Act, 1925: see s. 22 of that Act. The reason is that if the equity is shifted to the proceeds no further protection is required.

Under a trust for sale.

(2) If the conveyance is made by trustees for sale and the equity affected is made to attach to the proceeds or the income till sale, provided the money is paid to a trust corporation or to at least two trustees it will have the overreaching effect: L. P. Act, 1925, s. 2 (1) (ii). Purchasers are not concerned with trusts affecting the proceeds: *ib.*, s. 27. Trustees for sale

have the same powers (including the overreaching power) as a tenant for life: *ib.*, s. 28. The expression "equitable interests" includes interests and charges in or over the proceeds of sale of land: *ib.*, s. 205 (1) (x). Special overreaching powers are given to trustees for sale in regard to charges formerly affecting an undivided share in land: *ib.*, 1st Sch., Pt. IV, paras. (1), (3), (4), (9).

By legal mortgagees.

(3) If the conveyance is made by a mortgagee in exercise of his paramount powers: *ib.*, s. 2 (1) (iii). For the mortgagee's powers, see *ib.*, ss. 88, 89, 99, 101 (1) (i) (6), 104 (1). Whether the mortgage has priority over the interest (s. 104) may not be the only question to decide, for the interest may be rendered void, as respects the purchaser, for want of registration under the L. C. Act, 1925.

By personal representatives.

(4) If the conveyance is made by personal representatives in exercise of their powers: L. P. Act, 1925, s. 2 (1) (iii). Personal representatives are, in this respect, on the same footing as trustees for sale: Ad. of E. Act, 1925, ss. 39 and 36; S. L. Act, 1925, s. 110 (3).

Sales, &c., by the court.

(5) If the conveyance is made under an order of the court and the equitable interest is bound by the order: L. P. Act, 1925, s. 2 (1) (iv). See also ss. 90 and 195 (realisation of equitable charges); s. 91 (sale in action for redemption or foreclosure); as to vesting orders: s. 9; and as to orders generally: s. 204.

Powers to overreach where equitable interest is created before the trust for sale or the settlement.

Where the equitable interest is "created" (see L. P. Act, 1925, s. 205 (2) for the extended meaning of "created") before the disposition on trust for sale or the settlement is made, then, unless it can be overreached under the other provisions (*e.g.*, by means of a compound settlement, or because the charge originally affected an undivided share in land), two special methods are devised to enable it to be overreached, provided it is not a family charge within S. L. Act, 1925, s. 1 (1) (v), for in that case a settlement is created and title must be made under that Act.

The first method.

The first method is described in L. P. Act, 1925, s. 2 (2). Under this the estate owner is allowed to convey the legal estate, either to a trust corporation or to two or more trustees approved by the court, on trust for sale. Thereupon the equitable interest will attach to the proceeds of sale, and the equitable interest can be overreached by such trustees and their successors in office.

Interests which cannot be over-reached by this method.

The equitable interests which cannot be overreached by this method are set out in sub-s. 3 of the same section. These consist of—

(i) Interests protected by the deposit of documents. These are paramount as they were under the old law: s. 13. It is for a purchaser to see that the documents are in the proper custody.

(ii) The benefit of restrictive covenants, equitable easements, estate contracts, and (with certain exceptions) other interests, protected by registration.

The reason is that these rights cannot be represented in terms of money; hence cannot properly be shifted to the proceeds of sale.

The second method.

The second method is described in S. L. Act, 1925, s. 21. Under this the estate owner is allowed to settle his legal estate; the trustees of the settlement must be either a trust corporation or at least two trustees approved by the court; no further application to the court will be required when new trustees are appointed.

The interests which cannot be overreached by this method (see sub-s. 2) are the same as in the case of the first method.

Capital money arising, or the income thereof, is applicable for discharging or keeping down the equitable interests overreached in the proper order.

Other overreaching provisions.

The other overreaching provisions have been briefly referred to when summarising the Act in which they are contained, particularly those in the L. C. Act, 1925, which invalidate, as respects a purchaser, the interests which ought to be protected by registration.

Meaning of "Purchaser" in Part I.

"Purchaser" in Part I of the L. P. Act, 1925, means a purchaser for money's worth: s. 205 (1) (xxi).

(12) *Enforcement of Equitable Interests.*

Interests shifted to proceeds of sale.

The provisions as to the enforcement of or giving effect to equitable interests and powers (as opposed to the protection thereof) are contained in s. 3 of the L. P. Act, 1925, as respects trustees for sale and estate owners; in s. 16 of the S. L. Act, 1925, as respects settled land; and in s. 103 of the L. R. Act, 1925, as respects registered land.

Giving effect to equitable interests.

As respects trustees for sale and estate owners, they are to give effect to the equitable interests and powers, whether created *before* or after a disposition on trust for sale, of which they have notice according to their priorities. In this way claims which

have priority to a trust for sale will nevertheless attach to the proceeds of sale. When this is the case a purchaser is not concerned with them : L. P. Act, 1925, s. 27.

In proper cases legal estates will be created in priority to the trust for sale. No conveyance will be made in undivided shares, but the tenants in common absolutely entitled may require the legal estate to be conveyed to not more than four of them on trust for sale : L. P. Act, 1925, s. 3 (1) (*b*).

Conveyance to not more than four beneficiaries on trust for sale.

Legal effect can be given to charges, rights of reverter and rights of entry : *ib.*, s. 3 (2), (3).

Charges, rights of reverter and rights of entry.

Disputes will be submitted to the court, vesting orders can be made by it : L. P. Act, 1925, s. 3 (5).

As respects settled land, similar rules apply to equitable interests, whether created before or after the vesting instrument, thus these interests will attach to the capital money.

Settled land, interests shifted to capital money.

The question in each case will be whether or not a legal estate ought to be created so as to have priority to the settlement.

Provision is made for creating legal estates expressly subject to equitable interests unless postponed, *e.g.*, in default of available capital money, portions may have to be raised by mortgage subject to a subsisting jointure : S. L. Act, 1925, s. 16.

In the case of registered land a legal estate may be registered to give effect to a minor interest ; the principles applicable to unregistered land apply : L. R. Act, 1925, s. 103.

Registered land.

(13) *Protection of Equitable Interests.*

The restoration of the paramount position of the legal estate, by giving to the estate owner the overreaching powers above described, rendered it necessary to provide some safeguards for the equitable interests and powers which might otherwise have been improperly affected.

Where the equitable interest is made to attach to the capital money or proceeds of sale arising from the transaction, a sufficient protection is afforded by requiring that the money shall be paid either to a trust corporation or to at least two individual trustees : L. P. Act, 1925, s. 27 (trusts for sale) ; S. L. Act, 1925, s. 94 (settled land) ; T. Act, 1925, ss. 14 and 37 (2) (trustees receipts and appointment) ; Jud. Act, 1925, s. 160 (representation during a minority or a life interest to a trust corporation or two individuals).

Payment to a trust corporation or to not less than two individuals.

Indeed, where this protection is afforded, persons interested under settlements or under a trust for sale are not permitted

No other protection necessary.

to register a general equitable charge as a land charge in addition thereto: L. C. Act, 1925, s. 10 (1), Class C (iii). Even if an annuity is registered in the annuities register or as a land charge, or a limited owners charge or general equitable charge is registered as a land charge, it will not prevent the charges from being overreached: L. P. Act, 1925, s. 2 (3) (v); S. L. Act, 1925, s. 72 (3); this last section is applicable also to dispositions of land held on trust for sale (L. P. Act, 1925, s. 28); and to disposition by personal representatives: Ad. of E. Act, 1925, s. 39.

There are, however, cases where an equitable interest cannot properly be represented by money or where some restrictions on dispositions are expedient. The safeguards applicable to such cases may be thus briefly summarised—

Other safeguards. Yorkshire and Middlesex.

(1) Registration of documents in Middlesex and Yorkshire remains on foot in regard to legal estates, it applies to probates and letters of administration (L. P. Act, 1925, s. 11) and, as regards equities, it applies to puisne mortgages (*ib.*, 1st Sch., Pt. VII, para. 6; Pt. VIII, para. 5); also in Yorkshire a general equitable charge, restrictive covenant, equitable easement or an estate contract may be registered as a land charge in the local registry instead of at the land registry: L. C. Act, 1925, s. 10 (6). Registration in a local registry operates as notice: L. P. Act, 1925, s. 197, but without prejudice to s. 94.

Possession of documents.

(2) Equities will be protected by the possession of documents relating to the legal estate affected: L. P. Act, 1925, s. 13. Before handing over documents to a tenant for life, the trustees will, in cases where the settlement might otherwise be concealed, require notice of the vesting instrument to be endorsed on one of the documents: S. L. Act, 1925, s. 98.

Persons in possession.

(3) The rights of persons in possession are safeguarded: L. P. Act, 1925, s. 14; L. R. Act, 1925, s. 70 (1) (*g*). This is not a matter for an abstract or a register, but it involves enquiries on the spot. As regards the Limitation and Prescription Acts, see L. P. Act, 1925, s. 12; L. R. Act, 1925, s. 75.

Death duties after 1926.

(4) Inland Revenue charges, arising after 1925, will be protected, when considered necessary, by land charges or notices on the register: L. P. Act, 1925, s. 17; L. C. Act, 1925, s. 10, Class D; L. R. Act, 1925, s. 73.

Consents to dealings where land is held on trust for sale.

(5) Where land is held on trust for sale the trustees remain liable to obtain any consent made requisite by the disposition, though the consent of not more than two persons will be sufficient for a purchaser: L. P. Act, 1925, s. 26 (1). The trustees must

consult the wishes of the majority (according to value) of the persons interested : *ib.*

As to consents required otherwise than on a sale : *ib.*, s. 28 (1); and as to partitions : *ib.*, s. 28 (3). The consent of an incumbrancer of a share in land, formerly held in undivided shares, whose charge is defeated when the trust for sale is exercised, has to be obtained, though the purchaser will not be concerned : *ib.*, 1st Sch., Pt. IV, para. 1 (9).

Advowsons.

(6) The restrictions on dealings with advowsons remain in force : *ib.*, s. 201. As to these, see 1 Williams V. & P., 3rd Ed., 421 to 424; and the Benefices Act, 1898 (Amendment) Measure, 1923, for which see the Law Reports (Statutes), 1924, Measure, No. 1.

Registration under Land Charges Act, &c.

(7) Registration under the L. C. Act, 1925, operates as notice (L.P. Act, 1925, s. 198), but without prejudice to s. 94. References to registration under this Act, include registration under the Companies Act, 1908, s. 93 (authorised by s. 10 (5)), or in a Yorkshire register (authorised by s. 10 (6)), see L. P. Act, 1925, s. 205 (3) ; S. L. Act, 1925, s. 117 (3).

As to the interests which can be protected by such registration, see summary of the Land Charges Act, *supra.*

Charitable and public trusts.

(8) In dealings with land held on charitable or public trusts under s. 29 of the S. L. Act, 1925, the consents and orders which would have been requisite had the powers been conferred by the instrument creating the trust (Charitable Trusts Act, 1855, s. 29 ; as to exempted charities, see Charitable Trusts Act 1853, s. 62) are rendered necessary by that section. Also where the full price or rent is not given or an interest in land is acquired, the like consent or order is required as on a sale : *ib.*

When a purchaser of settled land investigates equities.

(9) In the so-called freak cases (S. L. Act, 1925, s. 9) and where a settlement is made before 1926 or is expressed to be made in a way which is not authorised, then a purchaser, in default of a special condition (such as that in the General Conditions of 1925, relative to settled land) will have to satisfy himself that the land was included in such settlement, that the vesting instrument conveyed the land to the proper person and that the proper trustees have been nominated : see S. L. Act, 1925, s. 110 (2) proviso.

Legal remedies of assignees of tenant for life.

(10) Certain legal remedies are conferred on assignees of tenants for life in order that there may be no unnecessary hindrance to dealings with life estates : S. L. Act, 1925, s. 111 ; see also L. P. Act, 1925, ss. 137-8.

Protection of lunatics.

(11) When a new trustee is appointed in place of a lunatic trustee who is also beneficially interested in possession (see L. P. Act, 1925, s. 22) and the appointment is made by his co-trustee, the judge or master in lunacy must consent to the appointment: T. Act, 1925, s. 36 (9).

Endorsement of notice of appointment of trustees.

(12) Notice of an appointment of new trustees will be endorsed on a vesting instrument or a conveyance on trust for sale: T. Act, 1925, s. 35.

Personal representatives to act together.

(13) All personal representatives to whom representation has been granted must join in dispositions: Ad. of E. Act, 1925, ss. 2 (2), 8; save where separate representation is granted in respect of trust estate or settled land: ss. 13, 24; Jud. Act, 1925, s. 155.

Endorsement of notice of assents or conveyances by personal representatives.

(14) Notices of assents and conveyances by a personal representative will be endorsed on the probate or letters of administration: Ad. of E. Act, 1925, s. 36.

Effect of conveyances by personal representative, and powers of the court.

(15) Except in favour of a purchaser for money's worth, an assent or conveyance by a personal representative will not prejudice the rights of any other person: *ib.*, s. 36 (9); the right to follow the property is preserved: *ib.*, s. 38; the court has power to order any transaction to be carried out for giving effect to the rights of the persons interested: *ib.* The proceedings can be registered as a pending action.

Right to a conveyance.

(16) The powers of disposition of a personal representative do not affect the right of any person to require an assent or conveyance to be made: Ad. of E. Act, 1925, s. 39 (2).

Right to possession, a receiver, a conveyance or to be registered.

(17) Before assenting or conveying, a personal representative may let a beneficiary into possession without affecting his power to convey: *ib.*, s. 43. And the beneficiary may apply to the court for an order for possession, a receiver, a conveyance, or to be registered as proprietor: *ib.*

Protection against dispositions by proprietor.

(18) The methods of protection against the effect of registered dispositions are notices, cautions, inhibitions and restrictions to be entered on the register: L. R. Act, 1925, ss. 48-62, and see the summary of that Act, *supra.*

(14) *Effect of Mistakes, &c.*

Conveyancing with the aid of a register of title has this advantage over the other system: if a mistake is made in the form of carrying out a transaction it is generally discovered in time for it to be rectified while the parties concerned are still in touch with one another.

No doubt the legal profession will be much concerned to see that the new practice is worked well, particularly during the first ten years' trial period; still, it is too much to expect that mistakes will not occur. On this account an attempt has been made, when practicable, to indicate what the result of a mistake will be and to minimise the inconvenience caused thereby. The following are a few examples :—

Land subject to manorial incidents.

(1) If an assurance of land subject to manorial incidents is not produced to the steward for endorsement within six months it will not pass the legal estate, but the court has power to extend the time : L. P. Act, 1922, s. 129.

Extinguishment of manorial incidents.

(2) Though manorial incidents are extinguished at the end of ten years, the lord does not lose his right to compensation for fifteen years : *ib.*, s. 140.

Grant of a perpetually renewable lease.

(3) A demise purporting to create a perpetually renewable lease operates to create a term of 2,000 years : *ib.*, 15th Sch., para. 5.

Contract to grant same.

(4) A contract to grant such a lease operates as a contract to grant a term of 2,000 years : *ib.*, 15th Sch., para. 7 (1); though a contract to renew a lease for more than 60 years is void : sub-s. 2.

Leases for lives.

(5) Leases for lives at a rent or for a fine operate to create a term of 90 years terminable by notice : L. P. Act, 1925, s. 149 (6).

Conveyance to an infant.

(6) A conveyance of a legal estate to an infant operates as an agreement for a settlement : S. L. Act, 1925, s. 27. Such a conveyance to an infant and a person of full age vests the legal estate in the person of full age on trust for sale : L. P. Act, 1925, s. 19 (2).

Conveyance in undivided shares.

(7) A conveyance to persons of full age as tenants in common is not void but vests the legal estate in them or in four of them on trust for sale : *ib.*, s. 34.

Contracts.

(8) If a vendor makes a stipulation which is void, he cannot rescind the contract because the purchaser insists on his rights : L. P. Act, 1925, ss. 42 (8), 125.

Reservation of legal estates.

(9) If a conveyance of a legal estate is expressed to be subject to another legal estate not in existence, nevertheless it will operate as a reservation of the latter : L. P. Act, 1925, s. 65 (2).

Power to rectify mistakes.

(10) An express power is given to rectify mistakes in a simple manner : L. P. Act. 1925, s. 66 ; see also as to leases under powers, s. 152.

Covenant with covenantor.

(11) Even if a covenantor covenants with himself and another, the covenant will be good: *ib.*, s. 82.

Mortgage by conveyance.

(12) If an estate owner purports to convey his estate by way of mortgage it will operate to create a mortgage term: *ib.*, ss. 85-6.

Disclosure of trusts.

(13) If trusts affecting a mortgage debt are disclosed this will not affect the title to the land: *ib.*, s. 113.

Cesser of mortgage terms.

(14) A dealing purporting to keep alive a mortgage term, except to protect a limited owner, when the money is paid, will be ineffectual: *ib.*, s. 116.

Endorsed receipt on a mortgage.

(15) An endorsed receipt will operate either as a re-conveyance or a transfer as the circumstances require: *ib.*, s. 115.

Reversionary leases.

(16) Reversionary leases must take effect within 21 years or be void: *ib.*, s. 149. It would not be feasible to accelerate the commencement of the term; that might prejudice beneficial interests.

Limitations too remote.

(17) Limitations void for remoteness will be validated if the age of 21 years, when substituted for the age taken, would make the gift good: *ib.*, s. 163.

Settlement in unauthorised form.

(18) A settlement in an unauthorised form will operate as an agreement for a settlement: S. L. Act, 1925, ss. 4, 11, 110 (2) (*d*).

Absence of vesting instrument.

(19) Dispositions which are defective for want of a vesting instrument operate as agreements: *ib.*, s. 13.

Trustees of compound settlements.

(20) A defect in the form of an order appointing trustees of a compound settlement will not of necessity result in bad titles being conferred: *ib.*, s. 33 (2).

Tenant for life with no beneficial interest.

(21) If a tenant for life has no inducement to exercise his powers, provision can be made for the powers to be exercised by the trustees: *ib.*, s. 23.

Purchase money for timber or fixtures.

(22) If the purchase-money for timber or fixtures included in a sale of land is, by mistake, paid to the tenant for life, the court may, on the mistake being rectified, confirm the conveyance; S. L. Act, 1925, s. 49 (3).

Dealings with tenant for life.

(23) Where the trustees, on behalf of the tenant for life, deal with another body of persons, which includes one of themselves, the transaction may be confirmed by the court: *ib.*, s. 68 (3).

Rectification of the register.

(24) Wide powers are given to rectify the register of title: L. R. Act, 1925, s. 82; as a general rule the rights of the person in possession will be maintained: *ib.*, sub-s. 3.

Penalty for non-registration.

(25) In a compulsory area the legal estate passes by the conveyance or lease in the first instance. It is only lost if the grantee or his successor does not apply for registration within

the two months or other authorised period : L. R. Act, 1925, s. 123. Formerly the legal estate did not pass till the application was made : L. T. Act, 1897, s. 20, and an application by a successor in title of the grantee was of no avail ; the legal estate had to be got in again from the vendor or lessor. This can now be cured by registration after 1925 : L. R. Act, 1925, s. 69 (3).

(15) *Generally.*

The object of this chapter.

This chapter only purports to be an introduction to the study of the New Acts, the unrepealed parts of which occupy about 608 pages of the Law Reports (Statutes). Obviously, therefore, it cannot be exhaustive. The matters dealt with have been selected with a view to the reader carrying away a sufficient grasp of general principles to enable him to apply them to practical details. It will, it is hoped, be found that, throughout this work, enactments, material to the subject-matter dealt with, are duly noted. Though the amount of new legislation is large, it bears no comparison with the mass of enactments which have been repealed or rendered obsolete. Again, it will be remembered that large parts of the Consolidating Acts are merely reproductions of the old statute law brought up to date.

Enactments repealed.

CHAPTER II

Transitional Provisions under the New Acts.

(1) *Vesting Instruments, Production of Renewable Leases.*

Matters requiring immediate attention.

It has already been pointed out in the summary of the S. L. Act, 1925, in the last chapter, that a tenant for life cannot exercise his statutory powers until a vesting instrument has been executed.

Lessee to produce renewable lease to lessor within one year.

There are other matters which require immediate attention. For instance, a lessee holding under a perpetually renewable lease or underlease must produce it to his lessor within one year from 1st January, 1926 (L. P. Act, 1922, 15th Sch., para. 10 (1) (iii)), for endorsement, otherwise the proviso for re-entry (if any) will become exercisable : *ib.*

Arrangements for the extinguishment of manorial incidents.

Though, in consequence of the passing of the L. P. Act, 1922, a large number of copyholds have, since June, 1922, been enfranchised, still the large areas of land enfranchised by the Act, as well as land held in free tenure but subject to manorial incidents, remain to be dealt with. The time available is not too long.

(2) *Extinguishment of Manorial Incidents*

Quit rents.

If the land is only subject to a quit or chief rent it can, if preferred, be redeemed under L. P. Act, 1925, s. 191.

Otherwise, and for that and other purposes, the code for dealing with the extinguishment of manorial incidents is contained in L. P. Act, 1922, Part VI, and the 13th and 14th Schs. These provisions will be discussed in the part of this work relating to "Compensation Agreements."

Sufficient mention, for the present, has been made in Chapter I of the provisions for converting perpetually renewable leases and leases for lives into long terms, but the other transitional provisions of the Acts call for some further treatment, for the position of titles on 1st January, 1926, largely depends on them.

(3) *Vesting of Legal Estates on 1st January, 1926.*

Destruction of satisfied terms, &c., affecting leaseholds as well as freeholds.

(1) All satisfied terms, whether derived out of a freehold or leasehold interest, will have disappeared: L. P. Act, 1925, s. 5, 1st Sch., Pt. II, para. 1. If an estate owner is entitled to have another legal estate conveyed to him so as to merge or extinguish it, then that estate will be extinguished : *ib.*, 1st Sch., Pt. II, para. 2. This only applies immediately after the Act comes into force ; the estate owner will not lose any protection which the estate would have afforded him if kept on foot : *ib.* This would apply to an estate outstanding in a trustee.

Conversion of legal interests not capable of subsisting as legal estates into equities.

(2) All former legal interests in land which are not capable of subsisting as legal estates (*ib.*, ss. 1, 7 (1) and (2)) are converted into equitable interests : *ib.*, s. 1 (3), 1st Sch., Pt. I.

When a vesting instrument has been executed in respect of settled land, legal estates created by the limitations of the settlement (*e.g.*, terms of years absolute) will be converted into equitable interests : S. L. Act, 1925, 2nd Sch., para. 1 (6).

Certain terms converted into equitable interests.

Legal estates, how vested.

(3) By virtue of L. P. Act, 1925, 1st Sch., Pts. II to VIII ; S. L. Act, 1925, 2nd Sch., paras. 2 and 3 ; L. P. Act, 1922, 12th Sch. (as amended), and 15th Sch., legal estates are got in if necessary, and vested in the following persons, but without affecting beneficial interests.

Freeholds : General Principles.

As to the fee simple in freehold land, including enfranchised land :—

Absolute owners of full age.

(i) Where there is an absolute owner of full age it vests in him : L. P. Act, 1925, 1st Sch., Pt. II. For instance, an equitable owner of the fee simple will acquire the legal fee simple, but not so as to divest the estates of trustees for sale. A person includes a corporation.

But where he has created mortgages, not being mere equitable charges not supported by a legal or equitable estate, subject to the mortgage terms, whether or not created by the Acts, vested in the mortgagees : *ib.*, Pts. VII and VIII.

Mortgagees.

(ii) A mortgagee of full age, who has some legal or equitable estate to support his mortgage, takes a term of 3,000 years. If there are two or more mortgages, each subsequent mortgagee takes a term one day longer than the mortgagee who ranks next above him : *ib.*, Pt. VII. As to the position of mortgagees of enfranchised land : L. P. Act, 1922, 12th Sch., para. (1) (*f*).

Debenture trustees are in the same position as mortgagees: L. P. Act, 1925, 1st Sch., Pt. VII, para. 5.

Sub-mortgagees.

(iii) A sub-mortgagee of full age takes a derivative term less by one day than the term vested in the principal mortgagee, who created the sub-mortgage. This applies where the sub-mortgage was made by conveyance of the fee simple: *ib.*, Pt. VII, para. 4.

Trustees holding on trust for sale.

(iv) Trustees (of full age) holding on trust for sale, take the fee simple, subject to mortgage terms, if any, in the same way as an absolute owner: *ib.*, 1st Sch., Pt. II.

This applies to all the implied trusts for sale (see Chapter I, *supra*), *e.g.*, where by reason of the land being held in undivided shares, or being held by joint tenants (not being tenants for life) beneficially, or being as respects a legal estate, held jointly and beneficially by a person of full age and an infant, a trust for sale is implied: *ib.*, 1st Sch., Pt. II, para. 6 (*b*).

Personal representatives.

(v) Personal representatives, of full age, take in the same way (the land not being settled land) as trustees for sale: *ib.*, 1st Sch., Pt. II., paras. 3, 4, 6 (4).

Tenant for life, statutory owner, or personal representative.

(vi) A tenant for life, statutory owner, or personal representative (see S. L. Act, 1925, 2nd Sch., para. 2), as respects settled land, takes such legal estate as under the S. L. Act, 1925, he has power to convey: L. P. Act, 1925, 2nd Sch., Pt. II, paras. 5, 6 (*c*). For instance, if the fee simple is vested in a trustee on trust to pay A. an annuity and subject thereto in trust for B. in fee simple, this creates a settlement: B. will take the legal estate but cannot during the lifetime of the annuitant exercise his statutory powers or convey a legal estate till a vesting deed has been executed nominating S. L. Act trustees. This is also important in connexion with the getting in of interests undisposed of by the settlement, for instance, the reversions and rights of reverter mentioned in s. 1 (4) and (5) of the S. L. Act, 1925.

The above examples indicate the general principles, but there are some special cases to which attention should be called.

Infants.

Infants beneficially interested.

Where an infant is immediately before 1926 beneficially entitled to a legal estate or would if of full age be a tenant for life (*e.g.*, executors may have previously assented to a life estate passing to an infant), then the settled land (which includes the legal estate) vests in the S. L. Act trustees: S. L. Act, 1925, 2nd Sch., para. 3; L. P. Act, 1925, 1st Sch., Pt. III, para. 1.

If there are no trustees it vests in the Public Trustee pending their appointment: *ib.* The Public Trustee may act if requested: *ib.*

Where land vests when infant subsequently attains full age.

If before the Public Trustee accepts the trust and before trustees are appointed in his place the infant attains full age then the land vests in him: *ib.*

Infant beneficially interested with a person of full age.

Where immediately before 1926 an infant is entitled beneficially to a legal estate jointly with a person or persons of full age then the legal estate vests in the persons of full age on the statutory trusts (L. P. Act, 1925, s. 35), and power is given if there is only one trustee for the parents or guardian to appoint an additional trustee: L. P. Act, 1925, 1st Sch., Pt. III, para. 2.

Infant tenant for life with a person of full age.

Where an infant is tenant for life jointly with a person of full age, then during the minority the person of full age is treated as the tenant for life: S. L. Act, 1925, s. 19 (3), 2nd Sch., para. 3 (6); and under L. P. Act, 1925, 1st Sch., Pt. II, paras. 5, 7 (*g*); Pt. III, para. 5; the legal estate vests in the person of full age on the trusts of the settlement.

Infants solely entitled as personal representative, trustee or mortgagee.

Where immediately before 1926 an infant was solely entitled as personal representative, trustee or mortgagee, to a legal estate, or if the infant had been of full age the L. P. Act, 1925, would have so vested a legal estate in him (*e.g.*, a mortgage term might have been vested under Pts. VII or VIII of 1st Sch. to that Act) then the legal estate or mortgage term and the mortgage debt will vest in the Public Trustee pending the appointment of new trustees in his place: *ib.*, 1st Sch., Pt. III, para. 3.

These provisions apply where two or more infants are so entitled, *i.e.*, are not entitled jointly with a person of full age.

Personal representatives, trustees and mortgagees of whom any one is an infant.

Where immediately before 1926 personal representatives, trustees or mortgagees are jointly entitled to a legal estate, and any one of them may be an infant, or where immediately after 31st December, 1925, the legal estate would have so vested if the infant were of full age (*e.g.*, under any of the vesting provisions where a legal estate is vested in trustees or mortgagees) then the legal estate, mortgage term and mortgage debt will vest in such of them as are of full age (*ib.*, 1st Sch., Pt. III, para. 4); power is given to appoint an additional trustee if there is only one person of full age: *ib.*

Administrator during a minority.

An administrator appointed during a minority (Jud. Act, 1925, s. 165), does not lose his legal estate: L. P. Act, 1925, 1st Sch., Pt. III, para. 5. As to a tenant for life of full age or

statutory owner taking a legal estate, see L. P. Act, 1925, 1st Sch., Pt. II, para. 6 (*c*) ; S. L. Act, 1925, 2nd Sch., para. 1.

Land held in Undivided Shares in Possession.

Entirety vested in trustees or personal representatives.

(i) Where before 1926 the entirety is vested in trustees or personal representatives then the land vests in them on the statutory trusts (s. 35), and if there are any mortgages affecting undivided shares or equitable charges on the entirety which are not converted into legal mortgages, then those mortgages and charges are put behind the trust for sale : L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (1). If the legal estate is outstanding, it is vested in them under Pt. II of that Schedule subject to mortgage terms, if any, created under Pts. VII or VIII, or otherwise subsisting : *ib.*, Pt. IV, para. 1 (1).

Such trustees or personal representatives, being independent persons, there is no objection to putting the incumbrances affecting undivided shares behind the trust for sale, particularly as a receipt for capital cannot be given when the trust for sale or powers are exercised except by a trust corporation or at least two individuals : L. P. Act, 1925, ss. 27 and 33 ; Ad. of E. Act, 1925, s. 39 ; Jud. Act, 1925, s. 160 (2).

If one of the trustees was an infant then the legal estate will vest in such of them as are of full age : see *supra.*

Entirety (not being settled land) vested absolutely and beneficially in not more than four persons.

(ii) Where before 1926 the entirety (not being settled land, see *inf.*) is vested absolutely and beneficially in not more than four persons of full age, free from incumbrances affecting undivided shares, it vests in them on the statutory trusts : L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (2). As they are interested parties it would not be right to give them power to overreach incumbrances affecting undivided shares, but it does not matter whether there are incumbrances affecting the entirety, for these retain their priority : *ib.*, sub-para. 8.

Settled land held in undivided shares under one settlement.

(iii) Where before 1926 the entirety is comprised in one settlement, it will vest in the S. L. Act trustees of that settlement free from incumbrances affecting the undivided shares and from mortgages, not being legal mortgages, affecting the entirety on the statutory trusts Under these, effect will be given to the incumbrances shifted to the proceeds of sale : *ib.*, Pt. IV, para. 1 (3).

If the undivided shares are subject to different settlements this cannot be done, it would be impracticable to select the set of trustees in whom the entirety is to vest.

If there are no S. L. Act trustees, then the entirety will vest in the Public Trustee on the statutory trusts, pending the appointment of trustees in his place.

As to undivided shares falling into possession after 1925, see S. L. Act, 1925, s. 36; L. P. Act, 1925, 1st Sch., Pt. IV, para. 2.

Other cases of undivided shares.

(iv) In all other cases where the land is held in undivided shares the entirety will vest in the Public Trustee free from incumbrances (if any) affecting undivided shares, and from mortgages, not being legal mortgages, affecting the entirety on the statutory trusts, till new trustees are appointed: *ib.*, para. 1 (4). The persons entitled to more than a moiety can appoint new trustees with the consent of the mortgagees of undivided shares: *ib.*

Mortgagees of entirety.

The legal mortgagees of the entirety still take their mortgage terms in priority to the trust for sale: *ib.*, sub-para. 8. And where the owners of undivided shares have combined to place a mortgagee in the same position as if his mortgage had been created before the land became vested in tenants in common, then he is treated as a mortgagee of the entirety: *ib.*, sub-para. 7.

Consents of incumbrancers.

Though the statutory trust for sale and powers of management (s. 28) are as a rule to be exercised with the consent of the owners of incumbrances which have been divested, and shifted to the proceeds of sale, a purchaser will not be concerned to see that the consent has been given: 1st Sch., Pt. IV, para. 1 (9).

Partition actions.

Pending partition actions may continue, and contracts for sale in force on 1st January, 1926, by tenants in common and co-parceners can be completed under the old law: *ib.*, sub-paras. 10 and 11.

Where the undivided shares fall into possession after 1925.

Where the land comes to be held in undivided shares after 1925, if the land is not settled the position is controlled by L. P. Act, 1925, 1st Sch., Pt. IV, para. 2, and ss. 34 to 36 and 38 of that Act; and in the case of settled land (which will be usual case) by S. L. Act, 1925, s. 36.

Party structures and open spaces.

Party structures and open spaces held in common are dealt with by L. P. Act, 1925, 1st Sch., Pt. V; see also s. 38 of that Act.

Tenancies by entireties.

Tenancies by entireties are converted into joint tenancies: L. P. Act, 1925, 1st Sch., Pt. VI; as the husband and wife are beneficially interested, they will hold on trust for sale: *ib.* s. 36.

Women married before 1883.

It is conceived that, where a woman married before 1883 has acquired a legal estate in freeholds before that year, there is

nothing in the Acts to divest the estate in her, though during the joint lives the husband is entitled to the rents and profits.

Perpetual Rentcharges and Easements.

Perpetual rentcharges and easements.

Perpetual rentcharges and easements held for an estate equivalent to a fee simple are subject to the same general principles as govern freehold land, that is to say, if the legal estate in the rentcharge or in the easement is not vested in the person entitled thereto, whether as absolute owner, trustee for sale, personal representative, tenant for life of full age, statutory owner, &c., the person so entitled will, on 1st January, 1926, acquire a legal estate in the rentcharge or easement; mortgagees however will take only a mortgage term therein: L. P. Act, 1925, 1st Sch., Pt. II, para. 7.

Leaseholds.

Terms of years absolute.

Similarly the same principles in regard to the vesting, on the 1st January, 1926, of legal estates in freeholds apply to leaseholds, though the only permissible legal estate in leaseholds is a "term of years absolute": L. P. Act, 1925, ss. 1 and 205 (1) (xxvii).

The distinction to be noted is that a mortgagee of leaseholds will take a sub term: L. P. Act, 1925, 1st Sch., Pt. VIII.

Subject to this, the person entitled to the term of years absolute, whether as absolute owner, trustee for sale, personal representative, tenant for life of full age, statutory owner, &c., will take it automatically: L. P. Act, 1925, 1st Sch., Pt. II. This applies as much to a rentcharge or an easement held for a term of years absolute as to leasehold land: *ib.*, para. 7.

Perpetually renewable leaseholds and leaseholds for lives.

It will be remembered that under the L. P. Act, 1922, 15th Sch., and L. P. Act, 1925, s. 149 (6), perpetually renewable leaseholds are converted into long terms of 2,000 years, and that leases for lives (including a lease for years terminable with life) at a rent or granted for a fine are converted into terms of 90 years terminable by notice, hence both these classes of leasehold interests (whether or not a lease for lives was more properly designated a freehold interest) will be clothed with legal estates.

Enfranchised Land.

Copyholds for years or for lives not renewable.

Under L. P. Act, 1922, copyholds for years not renewable, vest in the person entitled thereto in any of the capacities above-mentioned as a leaseholder, while copyholds for lives not

renewable take effect for terms of 90 years terminable by notice, see L. P. Act, 1925, s. 149 (6).

Copyholds perpetually renewable.

On the other hand the owner of the land takes the fee simple in perpetually renewable copyholds (L. P. Act, 1922, s. 135), though perpetually renewable leases derived out of perpetually renewable copyholds come within the 15th Sch. and the owners will take 2,000 years term.

Limitation Acts.

If a title to copyhold land has been acquired under the Limitation Acts, it will take effect in regard to the enfranchised land: L. P. (Amend.) Act, 1924, 2nd Sch., para. 4 (2) (*f*).

Construction.

If the vesting provisions affecting enfranchised land in L. P. Act, 1922, 12th Sch. (as amended), in any way conflict with the vesting provisions in L. P. Act, 1925, 1st Sch., the latter will have ultimate effect: *ib.*, s. 202.

These preliminary, though transitional, matters appear to be of such vital importance to the working of the new practice that it has been considered worth while to devote some space for the purpose of giving a short explanation of this subject.

CHAPTER III

Hints on Drafting.

Besides a knowledge of law there are many details in conveyancing with which a draftsman should be familiar; these are usually acquired more from actual practice than from books. The following remarks deal with matters of frequent occurrence.

Dates.

Where a date is known, there is no reason why the words "day of" should be employed, thus "1st January, 1920" is as intelligible as "the 1st day of January, 1920."

Parties.

Mistakes are sometimes made in describing the parties to a deed. To avoid this the following list of titles and designations may be found useful:—

For a Bishop: The Right Reverend Father in God, John, by Divine Permission, Lord Bishop of —— (for the Bishop of Durham substitute "Providence" for "Permission").

Peers and peeresses.

For a Cardinal: His Eminence, John, Cardinal ——.
For a Duke: The Most Noble John Duke of A.
For a Duchess: The Most Noble Alice Duchess of A.
For a Marquis: The Most Honourable Charles Marquis of B.
For a Marchioness: The Most Honourable Mary Marchioness of B.
For an Earl: The Right Honourable Henry Earl of C.
For a Countess: The Right Honourable Lily Countess of C.
For a Viscount: The Right Honourable Arthur Viscount D.
For a Viscountess: The Right Honourable Margaret Viscountess D.
For a Baron: The Right Honourable William Baron E.; or Lord E.
For a Baroness: The Right Honourable Ann Baroness E.; or Lady E.

Courtesy titles.

For eldest son of a Duke — The Right Honourable John F., commonly called Earl of F. (one of his father's titles).
For younger son of a Duke — The Honourable Frederick F., commonly called Lord Frederick F.
For daughter of a Duke — The Honourable Elizabeth F., commonly called Lady Elizabeth F.

Similar courtesy titles are given to the children of a marquis or an earl, the eldest son in each case taking one of the inferior titles of his father. But the younger son of an earl is not entitled to prefix "Lord" to his name.

Each child of a peer is entitled to the prefix "The Honourable." Formerly it was the practice of conveyancers in these cases to substitute the prefix "The Right Honourable," but this practice is not now often followed.

In the above cases no address is usually given, though sometimes it is in the case of a younger child of a peer.(*a*)

Privy Councillors.

For a privy councillor, prefix "The Right Honourable" and omit the word "Esquire"; otherwise describe as a commoner.

Recitals.

In recitals when referring to a peer or privy councillor it is usual to omit the prefix.

(*a*) For other courtesy titles assumed without strict right, see Elphinstone's Introduction to Conv., 7th ed., 65.

Baronets and knights.

For a Baronet: Sir John A., of &c., in the county of ——, Baronet.

For a Knight: Sir Robert B., of &c., in the county of ——, Knight, or with the initials designating his order (*e.g.*, K.C.B.).

Their wives.

The wife of a baronet or knight is entitled to the prefix "Dame," which should be placed before the Christian names.

A woman may also have the title of "Dame" in her own right: *e.g.*, D.B.E.

Commoner's name and additions.

The name comes first, the Christian names preceding the surname; next the name (if any) of the house or the number of the street; then, if in the country, the name of the parish or township, followed by the name of the county; or if in a city, the name of the city, followed lastly by the description of the party, such as Esquire, M.P.; or, Esquire, Barrister-at-law; Esquire; or Gentleman; or Grocer or other description. Thus, "John Brown, of Hull, in the parish of Y., in the county of Z., Esquire, D.L."; or "Mary Smith, of 48, High Street, in the city of Xham, Widow (*or* Spinster)." In marriage settlements it is convenient to describe the intended wife as "a daughter of A. B., of &c." where the parent joins.

Married women.

A married woman is described as "the wife of A. B., of &c." unless she is living apart from her husband, when her separate address should be given. When she is specially designated (*e.g.*, "hereinafter called the Vendor"), the designation should be placed immediately after her name, not after the name of her husband.

Testators.

Where a testator has several addresses it saves trouble when the probate is registered with the different companies, &c., in which he had investments, if all the addresses are given. Where he has changed his address it may also be desirable to refer to this.

Partners.

Partners should be described both individually and by their firm name.

Short definitions of the parties.

The practice is now common in family as well as in commercial conveyancing to define the parties directly after the name and addition is given. Thus, "the vendors," "the purchaser," "the borrower," "the mortgagees," "the lessor," "the tenant," "the trustees," "the earl," or "the present earl," are common definitions.

It is not desirable to use the definitions "the mortgagor" and "the mortgagee" or "the lessor" and "the lessee" in the same deed, as it is likely to result in clerical errors.

Successive peers bearing same title.

Again, where recitals refer to a succession of peers it is desirable, if they are mentioned again, to define them when first named, as well as when they are parties, by numbers according to date of creation or succession, *e.g.*, "hereinafter called the 1st Duke." Do not use the expression "sometimes hereinafter called"; the draftsman should make up his mind as to the best mode of reference and retain it throughout the draft.

Inclusive definitions.

Repetition may also be avoided by definitions framed to include future owners. Thus, "A.B., of &c. (hereinafter called the lessor, which expression, where the context so admits, includes the person or persons for the time being entitled in reversion immediately expectant upon the term hereby granted)."

Definitions, when used with care, shorten a draft to an appreciable extent, help to avoid the incessant use of the words

"the said," and make the draft easier to read; it is, however, possible to overload a draft with definitions.

Position of parties.

As a general rule the conveying parties come first, the persons having the legal estate being preferred to owners of equities; but now owners of equitable interests will seldom be made parties when a legal estate is being transferred or created. Formerly tenants in common were described in separate parts, in future there will be no tenants in common of land, it will be vested in trustees for sale and the tenancy in common will be transferred to the proceeds: L. P. Act, 1925, ss. 34-38; 1st Sch., Pts. IV-VI; S. L. Act, 1925, s. 36; joint tenants are placed together in one part. The purchasers, lessees, mortgagees, or grantees generally come last. In a release executed on the winding up of a trust the names of a husband and wife entitled under a sub-settlement are generally placed in one part and their trustees follow immediately after in another part.

Recitals.

It must be remembered that if the material facts are not correctly recited, the draftsman has but an indifferent chance of getting the operative parts right. Far too little attention is paid to recitals, and beginners have often failed for want of studying Davidson's volume containing the common form recitals. These forms are longer than those in modern use, and will now be out of date, but they showed in each case what should be referred to. In this work common form recitals have been added and are now copiously referred to. Some nervous practitioners avoid the difficulty in deciding what is material, by reciting almost everything *verbatim*, merely changing the tense or mood. This may be safe, and may, moreover, be necessary in pleadings or where a question of construction arises, but more often than not it results in obscurity. In future, when a legal estate is being dealt with, the general rule will be to exclude references to equitable interests in the recitals. For an exception to this rule, see S. L. Act, 1925, s. 110 (2), proviso at the end of this sub-section.

When equitable interests should not be referred to.

Besides having to consider whether the facts are material the draftsman must consider who will have the custody of the document he is reciting. If his client will obtain it, there will not, as a rule, be any need to recite it at length; in many cases the document which is being prepared may be made supplemental to the document in recital.(*b*) Where it is made supplemental,

Documents made supplemental.

(*b*) L. P. Act. 1925, s. 58. A document may be made supplemental to a will as well as to a deed: *ib.*

it will be sufficient to describe very shortly the nature of the principal document, *e.g.*, "being a charge by way of legal mortgage of the fee simple of the —— estates in the counties of —— to A.B. for securing £—— and interest," or "whereby A.B. did so and so." There is no need for the recital of the principal deed to come first, and where a deed is made supplemental to several others, they may be recited at different places in the recitals according to chronological order or otherwise.

Different ways of reciting the same document.

Another result of the rule that the material parts of a document should be brought out in the recital, is that the same document will be recited in different ways, according to the nature of the document which contains the recital. The best example is that of the recital of a mortgage. Thus, in a transfer, the recital should show to whom the property was demised or sub-demised or charged and who advanced or is entitled to the mortgage debt; unless the mortgagor concurs there is no need to show who conveyed the property, for the title to the right of redemption is not material. In future a mortgagor of land will have the fee simple or the term out of which the mortgage term is created: L. P. Act, 1925, ss. 85-7; *ib.*, 1st Sch., Pts. VII and VIII. Again, in a conveyance by a mortgagee under his power of sale, it must be shown to whom the property was demised or sub-demised or charged and that the day is past on which the power of sale arose: L. P. Act, 1925, ss. 101, 103. Under the new statutory power the mortgagee will be able to convey the fee simple or term vested in the mortgagor and not merely the mortgage term, save where part only of the property comprised in a lease is sold and the rent has not been apportioned. If the mortgagor and mortgagee join in selling, the recital of the mortgage should show that the mortgagor, being then entitled in fee, conveyed or demised or charged the property to the mortgagee in fee or for a term of years absolute, by way of mortgage for securing the principal and interest. In future mortgages of land can only be made by demise or sub-demise, or by charge by way of legal mortgage. A mortgage in fee is converted into a mortgage for a long term. A mortgage by assignment of a term is converted into a mortgage by sub-demise. Any mortgage can be converted, by the mortgagee, into a charge by way of legal mortgage, which operates as if the mortgagee had a term or sub-term. This can be done by a trustee mortgagee: L. P. Act, 1925, ss. 85-7. Further, in a reconveyance, if used,

the recital should show who conveyed the property and the effect of the proviso for redemption, besides the position of the mortgagee. Mortgages of land will generally be reconveyed, when wholly discharged, by an endorsed receipt: L. P. Act, 1925, s. 115; similarly, transfers will be effected by a specially prescribed short form: *ib.*, s. 114.

A beginner too often thinks that he has only to find a form for the recital of the document, and then to copy it, regardless of the nature of the document in which the recital is placed.

The order of recitals.

The general rule is to follow the chronological order in stating the facts. This, however, is a rule which, at any rate in lengthy documents, is subject to the important exception, that matters relating to each separate transaction should be grouped together in order to make the story intelligible. The object of the draftsman, in framing his recitals, must be to present the facts in as readable a form as is consistent with accuracy; the reader ought to be able to gather the material facts by a simple perusal of the recitals. It ought not to be necessary for him to make an epitome, before he can puzzle out the facts. If this is necessary, it shows that the recitals are no better, and may be worse, than a complicated abstract.

Scheduling documents and facts.

Much simplification can be effected, in complicated cases, by placing in schedules, or different parts of schedules, statements of documents and facts. These are grouped according to the subject matter. The recitals refer to the contents of each schedule or each part of a schedule, and state shortly the result.

The ordinary use of schedules.

Schedules can be safely used, *e.g.*, to insert a full dsecription of the property or of leases conveyed, or of leases subject to which the property is conveyed, or of documents in respect of which an acknowledgment of the right to production is given. Where schedules are used, in aid of recitals, they may frequently be of service in connexion with an acknowledgment of the right to production.

Full recitals and recitals of effect.

A full recital generally commences thus: "Whereas by &c. something was done"; but in recitals of effect the usual commencement is: "Whereas under &c. and by reason of &c. something is the case." A beginner may feel confident in reciting a single instrument, but without practice he may easily make mistakes in an attempt, to recite together, the effect of several documents and facts.

Point at which recitals should commence.

Where the abstract of title to freeholds shows that a vendor is an owner in fee simple in possession free from incumbrances,

Freeholds.

no part of the abstract should be recited, but the recital will be merely one of the vendor's seisin and of his agreement to sell. If a lease affects the property it will be referred to in the habendum, and if there are several they may be set out in a schedule.

Enfranchised land.

Where an abstract of title to enfranchised land shows that the vendor is entitled in fee simple in possession free from incumbrances, or subject to manorial incidents, or to a compensation rentcharge, it will be sufficient to recite his seisin free or subject as aforesaid. There are no longer any copyholds, but the first part of an abstract may show that land formerly copyhold on 1st January, 1926, belonged to certain persons either absolutely and beneficially, or as tenants for life, or as trustees for sale, or as personal representatives, in order to prove that the proper persons entered into the compensation agreement, or that the vendors are the persons in whom the land, subject to manorial incidents, is vested. Any customary legal estate outstanding in persons on the rolls is got in and vested in the persons interested in any of the above capacities (L. P. Act, 1925, 1st Sch., Pt. II); but the purchaser will not be concerned with the right of the lord of the manor to enfranchise or to enter into a compensation agreement: L. P. Act, 1925, s. 44 (6) (7).

Leaseholds.

Where an abstract of title to leaseholds shows that the vendor is absolutely entitled free from incumbrances, the lease must first be recited, and then the title will be taken up at the last assignment or disposition. The form generally runs thus: "And whereas after divers mesne assignments and acts in the law ultimately under an Assignment dated &c. the Vendor became and is now absolutely entitled to the premises demised by the recited Lease for the residue of the term thereby granted."

In reciting the title to leaseholds, a recital of the lease should in all cases come first, the description of the property should be set out in the recital, and in the operative part the parcels should, contrary to the general rule, be framed by reference to the recited lease, *e.g.*: "All the premises comprised in and demised by the recited lease."

Perpetual rentcharges, &c.

Where a rentcharge is being acquired, the first recital will be of the instrument (if any) creating the rentcharge and the parcels may be framed by reference thereto; but where tithe rentcharge is being acquired there would be no instrument of creation to recite, though it would be otherwise if the Minister of Agriculture and Fisheries had made an order creating a terminable annuity in place of the tithe rentcharge.

Incumbrances.

Where the abstract discloses an existing incumbrance, the recitals must be taken up at a point not later than the incumbrance. From the point that the recitals commence they must state all the dealings, including discharged incumbrances, up to the date of the document in which the recitals are placed; save that, if the conveyance relates to a legal estate, matters affecting equitable interests will not be referred to.

Recitals to be carried through from commencement.

When a mortgage has been wholly discharged it is sometimes possible to ignore it. In view of L. P. Act, 1925, s. 116 (cesser of mortgage terms) this practice can be supported, save where the mortgage has been referred to in a recited document.

Mortgages by deposit.

There are some exceptions to this rule—thus, as above explained, an hiatus is allowed in reciting the title to leaseholds; again, no references are made to a memorandum of a mortgage by deposit, unless absolutely necessary. Such mortgages are intended to drop off the title as soon as they are paid off and receipts endorsed on the memoranda. For the same reason, in future, references to equitable interests will be generally avoided when the legal estate is being dealt with.

Numbering recitals.

A useful practice when there are many recitals is to number them—thus the recitals begin on one line with "Whereas—" each recital being numbered at the beginning of a line thus (1), (2), &c.

Changes of name, married woman.

Parties to deed.

Where a married woman is a party to a deed and in a recited deed her maiden name appears, when reciting the parties of that deed, she should be referred to by her married name, thus: "the said Jane Smith (then Jane Brown spinster)"; the rule is that in the case of parties the name first appearing should be used throughout the draft, notice merely being taken of the former name

Not parties to deed.

When the person (not being a party to the deed containing the recital) is first mentioned in a recital, the old rule was to refer to him or her by the name borne at the date of the deed which is recited, referring later, if necessary, to changes of name when they occurred. However, it is now more usual, when the name first occurs in a recital, to refer to the subsequent change of name, thus: "Jane Smith (afterwards and hereinafter called Jane Brown)," and then to use the subsequent name in later recitals.

Sub-recitals not to be used.

Sub-recitals (*c*) must be avoided by re-stating the fact, which

(*c*) There is a doubt whether a sub-recital is a statement of a fact within L. P. Act, 1925, s. 45 (6), though the doubt does not seem to rest on much foundation.

is mentioned in the document about to be recited, before that document is recited. In a few cases a sub-recital may be useful and harmless ; it should then be introduced thus : " after recitals whereby it appeared that &c."

Recitals of intention.

The recitals relating to the intention of the parties are generally placed immediately before the operative parts ; where incumbrancers join in a conveyance, the recitals of the state of the mortgage debts and of their agreeing to concur should be placed after the general recital of the agreement to sell.

Of the contract for sale.

As a rule the date of the contract for sale should not be mentioned in the recital; (*d*) after the conveyance the contract will fall off the title.

Sales under Settled Land Acts.

Formerly the material facts to be shown on a sale under the Settled Land Acts were that the vendor was a tenant for life in possession of the land or had the powers of one, and that the trustees named in the conveyance were trustees of the settlement or compound settlement, for the purposes of the Acts. Now the tenant for life or statutory owner (whose title in nearly all cases is certified for the benefit of a purchaser: S. L. Act, 1925, s. 110 ; General Conditions of 1925) will be the trustee of the land ; this will appear from the vesting instrument which either in its body or by endorsement will show who are the S. L. Act trustees ; the trust instrument should not be recited, nor, if it is made after 1925, in the usual way, should it be investigated.

Purchase with capital money.

When land purchased has to be conveyed so as to become subject to a settlement, the conveyance will take the form of a subsidiary vesting deed, save where there is no principal vesting deed (*e.g.*, where the original settlement was of money only) then the conveyance will be a principal vesting deed. There will be no recital of the settlement; it will merely be referred to in the habendum.

Purchase of land by trustees of a money settlement under a power.

Where trustees purchase land under a power in a personalty settlement it is no longer correct to recite the settlement and disclose the power, but the land should be conveyed to them on trust for sale and the net proceeds directed to be held on the trusts of the settlement. A purchaser will not be concerned with the trusts affecting the proceeds of sale, he will merely have to see that, on a sale, the money is paid either to a trust corporation or to at least two individual trustees (L. P. Act, 1925, s. 27) ; all trustees for sale have power to purchase land: *ib.*, s. 28.

(*d*) As to contracts for leases under powers, see L. P. Act, 1925, s. 44 (9); S. L. Act, 1925, s. 90 (4).

"Trustees for sale" meaning of, "power of sale" effect of.

The expression "trustees for sale" means persons holding land on trust for sale: *ib.*, s. 205 (1) (xxix). There are, in reference to land, no longer such persons as trustees "with a power of sale," all such powers are now transferred to the tenant for life (S. L. Act, 1925, s. 108); the effect of purporting to give such a power merely makes the trustees into S. L. Act trustees: *ib.*, s. 30.

Rule as to keeping trusts off the title on a purchase or mortgage.

Thus, the first part of the old rule, that where trustees purchase land they disclose the trusts affecting the purchase money, and where they lend money on mortgage the trusts are kept off, is no longer applicable. If the trusts affecting a mortgage debt are disclosed they will no longer affect the title to the land: L. P. Act, 1925, s. 113.

Mortgage or transfer of a mortgage in consideration of marriage.

Even where a settlor on his marriage transfers a mortgage to his trustees, the trusts should not be disclosed. The practice is to recite the intended marriage (this is required on account of the stamp, the true consideration must always be stated), and the agreement to transfer. The mortgage debt is transferred to the trustees absolutely, and in the habendum they are directed to hold the debt, on the trusts declared concerning the same by the personalty settlement of even date. Under the old law no joint account clause was required in this case. The statutory receipt clause applies retrospectively. The transfer contains a power to appoint trustees corresponding to that in the settlement. When new trustees of the settlement are appointed, a separate deed is used to transfer the mortgage and appoint trustees of the original transfer from that appointing trustees of the settlement. This keeps the trusts off the title, but whether the trusts are disclosed or not a purchaser will not be concerned with them: *ib.*, s. 113. The same scheme is applied, where the settlor on his marriage creates a new mortgage in favour of his trustees.

Investments on mortgages after the date of the settlement.

Where trustees invest money on mortgage, they do so merely as owners on a joint account, and the settlement is in no way disclosed.

Strict settlements and settlements by way of trust for sale.

There are two classes of settlements of land to be distinguished. The first is a strict or realty settlement, where the land is limited on trusts (by means of a vesting instrument and trust instrument including a will) by way of succession, and trustees are appointed for the purposes of the S. L. Act. As the Statute of Uses has been repealed, and legal estates are confined to estates in fee simple (including a perpetual rentcharge) and

terms of years absolute, settlements can only be made by way of trust. It will be immaterial whether the word " trust " or " use " is employed ; to avoid confusion it is probable that the word " trust " will be used in practice. In such settlements the only person to make title is the tenant for life of full age in whom the land will be vested as trustee. The S. L. Act trustees merely join in the conveyance to give a receipt for the money.

In the case of infants solely entitled (*i.e.*, not with a person of full age) the statutory owners are the S. L. Act trustees ; the land will be vested in them unless it is retained by a personal representative. Where there is a discretionary trust for the benefit of two or more persons so that there is no tenant for life, then, unless the settlement gives the powers expressly to some person, the S. L. Act trustees will have the statutory powers of a tenant for life.

A settlement containing a future trust or power of sale comes within the first class : *ib.*, s. 30 (1) (iv). But a power of sale will not be effective save to constitute the donees S. L. Act trustees : *ib.*, ss. 30 (2), 108 (2).

Persons holding land on trust for sale.

The second class consists of settlements by way of immediate trust for sale, with or without an express power to postpone the sale. These come within L. P. Act, 1925, ss. 23-33. The trustees for sale are given all the statutory powers of a tenant for life, and will be the persons to make title for all purposes. They are also given power to partition the land between the persons interested in the proceeds of sale. If they refuse to exercise their trust for sale or their powers the persons interested may apply to the court. All personal representatives are given the powers of trustees for sale : Ad. E. Act, 1925, s. 39 ; L. P. Act, 1925, s. 33. A power to postpone sale is implied : *ib.*, s. 25.

This class of settlement is the one which most frequently occurs. Thus, where there is a money settlement, and land is to be held on the same trusts, the land should be conveyed by a separate deed on trust for sale and the trusts declared of the net proceeds of sale by the money settlement. Another common case is where a testator disposes of a mixed residue of real and personal property on usual trusts for sale and conversion. The usual administration trusts can be incorporated in a will, by reference to the Statutory Will Forms, 1925. The settlor or testator may not desire the land to be sold, and, in virtue of the power to postpone, it may never, in fact, be sold ; now there

Contingent remainders and entailed interests.

will, unless the contrary is expressed, be an implied power to postpone sale : L. P. Act, 1925, s. 25 (1). The feudal rule as to the vesting of contingent remainders has been abolished : L. P. Act, 1925, s. 1, and 1st Sch., Pt. I. An estate tail in money or other personal estate can (without a trust to invest in land) now be created in a way, permissible before 1926 only in the case of freehold land, by executed as opposed to executory instruments : L. P. Act, 1925, s. 130 ; the law as to the creation of entailed interests will now be the same for real and personal estate ; implied estates tail by means of informal expressions have also been abolished : *ib.* The rule in *Shelley's Case* has likewise been repealed : L. P. Act, 1925, s. 131.

Operative parts.

The question as to the forms the operative parts are to take cannot usefully be discussed here. The beginner cannot do better than take a book of precedents and study them. In the course of his work he will sometimes be unable to find a form to meet the case with which he has to deal. The reasons may be that his instructions merely indicate the result which is desired, and he may not know what common forms ought to be used. Or it may be that he will have to vary a common form or settle a new form. In the latter case he should base his draft on his general knowledge of the common forms and the law applicable to the case. The advantage of keeping in touch with (not slavishly copying) and, so far as possible, adopting the common forms in such cases is obvious. The common forms have come before the courts on many occasions, and their effect is well known ; full advantage of this ought to be taken. Again, the beginner should remember the rule, " If you get long you may know you are wrong," qualified by another rule, " There are worse mistakes than a little length." Make a practice of dividing up the clauses into paragraphs and sub-paragraphs, in this way many mistakes will be detected. If the draftsman cannot find a precedent or form at all on the lines of what is required, then probably he has been instructed to do something which is wrong or will damage his client's title. Time was when no very serious attempt was made to produce concise drafts. The effect of the old practice may even be discerned from time to time in modern drafts. The temptation to run to length, is not, however, so great to a beginner as to those who were brought up in the old practice. However praiseworthy an attempt may be to obtain a concise and readable draft, it does not free the draftsman from blame if

The preparation of new clauses.

Warning when a precedent cannot be found.

Concise draft.

for the sake of brevity he omits any power or clause properly required for carrying out the trust or transaction. Having regard to the wide powers given to a tenant for life and charity trustees by the S. L. Act, 1925, to trustees for sale by the L. P. Act, 1925, and to trustees and personal representatives by the T. Act, 1925, and the Ad. of E. Act, 1925, there will now be little reason for indulging in length. The tendency to give way to the desire of a testator to have a will that can be written on a sheet of notepaper, though it settles valuable property or attempts to effect some complicated arrangement, is most harmful. A will frequently gives work to the draftsman which is more difficult than the preparation of a Bill for Parliament, but the testator does not know enough to realise this. Rather than omit or shorten material forms it is better to give the property to trustees and direct them to settle or deal with it in accordance with scheduled instructions.

Wide statutory powers.

Short wills, danger of.

The short forms relating to wills published by the Lord Chancellor pursuant to L. P. Act, 1925, s. 177, to which reference may be made by testators should be of assistance to the profession.

Lord Chancellor's will forms.

Many draftsmen fail in style because they have been accustomed to use forms taken from any collection which may be at hand. The only way for a beginner to acquire a fixed style is to select one collection of precedents and mould his style on them; when he uses a form from another collection he should re-model it to make it consistent with his draft. When a draft is pieced together with forms from different collections, the result is generally disastrous.

Style.

Danger of using different collections of precedents in same draft.

Often more difficult than the preparation of a draft is the approval of one submitted on behalf of a party for whom the original draftsman was not acting. The rule then is that no alterations should be made except those necessary to correct clerical errors, to protect your own client, and to make the draft work. It is not your business to give the other side a lesson in conveyancing; indeed, an attempt to do so might injure the original draftsman. Where it is considered that a draft is fundamentally wrong, it may, if time permits, be advisable to return it untouched, with an opinion or letter asking for an explanation and for a new draft to be submitted. It should be borne in mind that if the draft carries out the intention of the parties it should not be touched at all. There is no need to make an alteration to show that the draft has been

Correction and approval of drafts.

perused; the signature at the foot will show that. To pass a draft without an alteration is no sign of weakness—in fact, rather the reverse.

Draft submitted by solicitor or client to counsel.

Where the draft is submitted by the client this is merely part of the instructions, and counsel will either adopt and settle it or prepare a new draft as he thinks fit; his duty is to do the best he can for his lay client. There is or should be no question of feelings on the part of the solicitor. The draft may be quite good, but counsel may know of a better scheme for carrying out the instructions; in any case it will probably take him less time to use his own forms. In theory all drafts, except Parliamentary Bills, are drawn by the instructing solicitor before being settled by counsel, but in practice it is generally more convenient for counsel to prepare and settle the draft.

Alteration of counsel's draft by client.

Save to correct clerical errors, counsel's draft ought not to be altered by his client without consulting him. He may not be a better draftsman but he must be presumed to know what he meant by his draft. Even if the firm is insured against liabilities for mistakes it is expedient to avoid claims for negligence.

Scheme for drafts.

Before the draftsman commences to dictate or prepare a draft, he should thoroughly digest his facts and make up his mind as to the proper way to carry out his instructions, otherwise much time and paper will be wasted.

THE LAW AND PRACTICE RELATING TO SALES.

CHAPTER IV

Contracts for Sale.(a)

Sec. I.—*The essentials of a valid contract for sale of land.*

Agreement must be in writing, signed by the party to be charged or his agent.

By s. 40 of the L. P. Act, 1925 (reproducing s. 4 of the Statute of Frauds) it is enacted that "No action may be brought upon any contract for the sale or other disposition of land, or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged, or by some other person thereunto by him lawfully authorised." This section applies to past and future contracts but does not affect the law relating to part performance or sales by the court: *ib.*, sub-s. 2. This section applies to a leasehold as well as to a freehold interest, including a contract for the sale of a lease for less than three years, though the lease itself may, under s. 54 (2) of the L. P. Act, 1925, be by parol: *Barrett* v. *Rolph* (1845), 14 M. & W. 348; 14 L. J. Ex. 308.

If several writings, one must be signed.

To satisfy the section there must be a writing signed by the party to be charged, or by some person lawfully authorised by him, which writing must either itself express all the terms of the contract, or refer to some existing document which, when read in conjunction with it, does so.

Parol evidence admissible to connect several documents.

Where it is sought to prove an agreement from several documents, parol evidence is admissible to connect them; for this purpose it is not necessary for the one document to describe or contain an express reference to the other; it is sufficient if the court is satisfied that such a reference is intended. Thus, if A. by letter offers to sell land to B. on the terms therein specified, and B. by letter says, "I accept your offer," parol evidence may be given to show that the offer alluded to by B. is

(a) For a further statement of the law of vendors and purchasers of land, see 1 Wolst. & Cherry, 11th ed., 193-218.

that contained in A.'s letter.(*b*) Where the signed document referred to "instructions," it can be shown by parol evidence that instructions had been given in writing, and that these were the instructions referred to: *Ridgway* v. *Wharton* (1857), 6 H. L. C. 238; 27 L. J. Ch. 46. Where B. signed an agreement to purchase land at H. from A., and A. signed a receipt expressed to be "for a deposit on the purchase of the land at H.," it was held that the receipt referred to the agreement, and constituted a contract binding on A.: *Long* v. *Millar* (1879), 4 C. P. D. 450. Where A. signed a memorandum containing all the essential parts of a contract, except the description of the property, and afterwards wrote to B. acknowledging the receipt of a deposit "on account of the purchase-money of the F. estate," it was held that the two documents might be read together.(*c*) Where a letter was enclosed in an envelope, it was held that the envelope might be used to supply the name of one of the parties.(*d*)

Essential parts of a contract.

The essential parts of a contract are: the names, or a sufficient description, of the vendor and purchaser; the amount and nature of the consideration to be paid on one side and received on the other; and a sufficient description of the property sold. Whether any particular term is an essential part of the contract is a matter to be considered in each case.

What is a sufficient designation of vendor or purchaser or property.

It is not necessary that the vendor should be actually named in the written contract, if he is sufficiently described to admit of his being identified by extrinsic evidence. The same rule applies to the description of the purchaser or the property sold: *Allen* v. *Whiteman*, 89 L. J. Ch. 534. The term "vendor" or "vendor's solicitor" is not a sufficient description;(*e*) but it may be sufficient to describe the vendor as "the proprietor": *Rossiter* v. *Miller* (1878), 3 A. C. 1124, 1142; 48 L.J. Ch. 10,

(*b*) Per Bramwell, L.J., in *Long* v. *Millar* (1879), 4 C. P. D. 450, 454; 48 L. J. Q. B. 596, 599. See also *Sheers* v. *Thimbleby* [1897], 76 L. T. 709.

(*c*) *Oliver* v. *Hunting* (1890), 44 Ch. D. 205; 59 L. J. Ch. 255; *Studds* v. *Watson* (1884), 28 Ch. D. 305; 54 L. J. Ch. 626.

(*d*) *Pearce* v. *Gardner* [1897], 1 Q. B. 688; 66 L. J. Q. B. 457; *Freeman* v. *F.* [1891], 7 T. L. R. 431. For more recent instances of memoranda, by reference to other documents, see *Dewar* v. *Mintoft* [1912], 2 K. B. 373; 81 L. J. K. B. 885; *Stokes* v. *Whicher* [1920], 1 Ch. 411; 89 L. J. Ch. 198; *Grindell* v. *Bass* [1920], 2 Ch. 487; 89 L. J. Ch. 591; and as to the admissibility of parol evidence see *Last* v. *Hucklesby* [1914], W. N. 157; *Auerbach* v. *Nelson* [1919], 2 Ch. 383; 88 L. J. Ch. 493.

(*e*) *Potter* v. *Duffield* (1874), 18 Eq. 4; 43 L. J. Ch. 472; *Jarrett* v. *Hunter* (1887), 34 Ch. D. 182; 56 L. J. Ch. 141; *Coombs* v. *Wilkes* [1891], 3 Ch. 77; 61 L. J. Ch. 42.

or " the trustee for sale " : *Catling* v. *King* (1877), 5 Ch. D. 660 ; 46 L. J. Ch. 384 ; or " the person who paid the £50 " : *Carr* v. *Lynch* [1900], 1 Ch. 613 ; 69 L. J. Ch. 345 ; and the property as " the property purchased for £420, at the Sun Inn, Pinxton, on the above date " : *Shardlow* v. *Cotterell* (1882), 20 Ch. D. 90 ; 51 L. J. Ch. 353 ; or " twenty-four acres of freehold land at T." : *Plant* v. *Bourne* [1897], 2 Ch. 281 ; 66 L. J. Ch. 643. A letter from the vendor naming the purchaser and demanding payment from him of the balance of " the purchase money " was held to be a sufficient indication of the purchaser so as to bind the vendor : *Studds* v. *Watson* (1884), 28 Ch. D. 305 ; 54 L. J. Ch. 626.

Objection of insufficient designation not removed by knowledge.

If the vendor is not sufficiently described, the contract is not rendered valid by the fact that the purchaser knew who the vendor was ;(*f*) this applies also to the purchaser : *Dewar* v. *Mintoft* [1912], 2 K. B. 373 ; 81 L. J. K. B. 885.

Agent of undisclosed principal.

It is sufficient if the offer or contract states the names of the contracting parties, though one may be only the agent of an undisclosed principal (*Filby* v. *Hounsell* [1896], 2 Ch. 737 ; 65 L. J. Ch. 852) ; but if the terms of a contract, made with an agent, are such that the agent is not liable as one of the contracting parties, the principal cannot sue on it unless he is named in the contract, or his identity cannot be disputed.(*g*)

What is a sufficient signing.

Save that the Sovereign, when executing by His sign manual, signs at the top of a document, the usual place for the signature of a contract is at the end, but the position is not essential, provided that it is so placed as to govern the whole instrument : *Caton* v. *C.* (1867), L. R. 2 H. L. 127 ; 36 L. J. Ch. 886. Thus, if a person draws up an agreement in his own handwriting beginning " I, A. B., agree," this is sufficient.(*h*) Where an agreement, in the form of a letter from A. addressed to B., whose name appeared at the beginning of the letter, was written by B.'s agent with his authority and presented to A. for signature and signed by him, it was held that B.'s name inserted by his agent was a signature binding on him within the section.(*i*) But an agreement in the usual form containing the names of

(*f*) *Jarrett* v. *Hunter*, *supra*.

(*g*) *Lovesy* v. *Palmer* [1916], 2 Ch. 233 ; 85 L. J. Ch. 481. As to agreements by agents, see *Cloncurry* v. *Laffan* [1924], 1 Ir. R. 78.

(*h*) *Saunderson* v. *Jackson* (1800), 2 Bos. & P. 238 ; *Bleakley* v. *Smith* (1840), 11 Sim. 150.

(*i*) *Evans* v. *Hoare*, 1892, 1 Q. B. 593 ; 61 L. J. Q. B. 470. See *Hucklesby* v. *Hook* [1900], W. N. 45 (report inaccurate) ; 82 L. T. 117 ; *Brooks* v. *Billingham* [1912], 56 Sol. J. 503.

the parties, and ending with "As witness our hands," without being followed by any name or signature, is not signed so as to satisfy the section, though in the handwriting of the solicitor or agent of the party sought to be charged.(*j*) So the alteration of a draft conveyance will not take the case out of the section: *Hawkins* v. *Holmes* (1721), 1 P. Wms. 770; nor the approval of a draft conveyance by the solicitor of one of the parties.(*k*)

Agent may be appointed by parol.

An agent for the sale or purchase of land may be appointed by parol, and his authority may be revoked at any time before the agreement is signed.(*l*)

Auctioneer agent for both parties.

A sale by auction is within s. 40 of the L. P. Act, 1925, so that there is no binding contract until the memorandum, which is usually written at the foot of the conditions of sale, is signed by the parties or their agent. But a vendor, by appointing an auctioneer, impliedly authorises him to sign the memorandum as his agent, and a similar authority is given by the purchaser by the act of bidding.(*m*)

Auctioneer's clerk, solicitor, or estate agent has no implied authority to sign contract.

Such implied authority does not necessarily extend to the auctioneer's clerk.(*n*) A solicitor has no implied authority to sign a contract for sale on behalf of his client.(*o*) Estate agents as such have no general authority to enter into contracts for their employers: *Thuman* v. *Best* [1907], 97 L. T. 239. They must have direct instructions.(*p*)

Contracts by letters complete when acceptance posted.

Contracts for sale are frequently made by letters. If A. by letters offers to sell land to B., and B. by letter accepts the offer, the contract is complete from the time when B.'s letter is

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(*j*) *Hubert* v. *Treherne* or *Turner* (1842), 3 Man. & G. 743; 11 L. J. C. P. 78. See also *R.* v. *Tart*, 5 Jur. N. S. 679; 28 L. J. Q. B. 173.

(*k*) See Dart, 7th ed., 258, 259.

(*l*) See Dart, 7th ed., 210, 211; and see *Yonge* v. *Toynbee* [1910], 1 K. B. 215; 79 L. J. K. B. 208.

(*m*) *Sims* v. *Landray* [1894], 2 Ch. 318; 63 L. J. Ch. 535; Dart, 7th ed., 208; and *cf. Dewar* v. *Mintoft* [1912], 2 K. B. 373; 81 L. J. K. B. 885; *McMeakin* v. *Stevenson* [1917], 1 I. R. 348.

(*n*) *Bell* v. *Balls* [1897], 1 Ch. 663; 66 L. J. Ch. 397; but, as in *Sims* v. *Landray*, *supra*, the clerk may show express authority from the purchaser. See also Dart, 7th ed., 208.

(*o*) *Smith* v. *Webster* (1876), 3 Ch. D. 49; 45 L. J. Ch. 528. See *Griffiths Cycle Corporation* v. *Humber & Co.* [1899], 2 Q. B. 414; 68 L. J. Q. B. 959.

(*p*) *Rosenbaum* v. *Belson* [1900], 2 Ch. 267; 69 L. J. Ch. 569, and as to authority of agents generally, see *Allen* v. *Whiteman*, 89 L. J. Ch. 534; *Daniels* v. *Trefusis* [1914], 1 Ch. 788; 83 L. J. Ch. 579; *North* v. *Loomes* [1919], 1 Ch. 378; 88 L. J. Ch. 217; *Keen* v. *Mear* [1920], 2 Ch. 574; 89 L. J. Ch. 513; *Lewcock* v. *Bromley* [1920], W. N. 346. As to the effect of subsequent ratification by the principal of an unauthorised variation of the memorandum: *Koenigsblatt* v. *Sweet* [1923], 2 Ch. 314; 92 L. J. Ch. 598.

posted, and it makes no difference if the letter is lost or delayed in transmission.(*q*) One of the letters, preferably the last, should be stamped.(*r*)

Where contract is contained in a number of letters.

Where a number of letters have been written concerning the contract the whole correspondence must be read, but if once a definite offer has been made and unconditionally accepted, and if the letters up to this point contain all the terms agreed on between the parties at the date of acceptance, the contract so made cannot be affected by subsequent correspondence : *Perry* v. *Suffields* [1916], 2 Ch. 187 ; 85 L. J. Ch. 460.

Statutory form.

The form prescribed by the Lord Chancellor under L. P. Act, 1925, s. 46, will apply to contracts by correspondence unless expressly excluded.

Offer may be withdrawn—promise to keep it open void.

An offer may be withdrawn or amended, so long as it remains unaccepted, and this is so, though the person making the offer promises to keep it open for a specified time, such promise being void as a *nudum pactum*.(*s*)

Time for acceptance may be extended by parol agreement.

When an offer prescribes a definite time for acceptance, the time may be extended by parol agreement, though the offer is required to be in writing : *Morrell* v. *Studd and Millington* [1913], 2 Ch. 648 ; 83 L. J. Ch. 114.

Withdrawal not effective until known to other party.

The withdrawal of an offer is not effective until it has been brought to the knowledge of the person to whom the offer was made ; an acceptance posted before the withdrawal is received is complete, though the letter of withdrawal may have been actually posted before the letter of acceptance.(*t*)

Sale to a third party equivalent to withdrawal.

A sale of the property to a third party is equivalent to a withdrawal, but it must be made known to the party to whom the offer was made before he need accept it as a withdrawal.(*s*)

Answer must be a simple acceptance.

The answer to the written offer must be a simple acceptance of the terms proposed, without the introduction of any new or different term : *Holland* v. *Eyre* (1825), 2 Sim. & St. 194. If the proposal is once refused, it cannot afterwards be revived by tendering a simple acceptance of it.(*u*)

(*q*) *Dunlop* v. *Higgins* (1846), 1 H. L. C. 381 ; *Re London and Northern Bank* [1900], 1 Ch. 220 ; 69 L. J. Ch. 24.

(*r*) Alpe, 18th ed., 58.

(*s*) *Dickinson* v. *Dodds* (1876), 2 Ch. D. 463 ; 45 L. J. Ch. 777 ; as explained in *Henthorn* v. *Fraser*, inf.

(*t*) *Henthorn* v. *Fraser*, 1892, 2 Ch. 27 ; 61 L. J. Ch. 373 ; Dart, 7th ed., 237, 238.

(*u*) *Hyde* v. *Wrench* (1840), 3 Beav. 334 ; *Stevenson* v. *McLean* (1880), 5 Q. B. D. 346, 350 ; 49 L. J. Q. B. 701.

Acceptance by parol.

An offer in writing containing all necessary particulars may be accepted by parol: *Filby* v. *Hounsell* [1896], 2 Ch. 737; 65 L. J. Ch. 852.

When reference to a formal contract amounts to a condition.

If an offer containing all the necessary terms is accepted unconditionally, there may be a binding agreement, even though the parties contemplate that a more formal document shall be drawn up and signed.(*v*) But if the acceptance is conditional upon or "subject to" a formal contract, this means that the acceptor reserves the right to make stipulations as to minor points—*e.g.*, title—and there is only a treaty.(*w*)

Acceptance subject to approval of title.

Where an offer for sale is accepted, "subject to the title being approved by my solicitor," such acceptance is not conditional, but merely means that the title shall be investigated in the usual manner, subject to the vendor's right to submit any objections to the decision of the court.(*x*)

Effect of subsequent correspondence.

Though letters standing alone may be sufficient evidence of a contract (see *Bristol Tramways, &c.* v. *Fiat Motors* [1910], 2 K. B., at p. 838), still subsequent correspondence continuing the negotiation on an important point may show that the contract was not complete.(*y*)

Notice to treat.

The effect of a notice by a body having compulsory powers to treat with a landowner for the purchase of land is dealt with later. In future the compensation money will not as a rule be paid into court if title can be made by the persons on whom the notice is served: L. P. Act, 1925, s. 42 (7).

What is an Interest in Land within the Section? (*z*)

What interest in land within the section.

An agreement to sell a right to go over land and kill and take away game is within the section,(*a*) but an agreement to sell

(*v*) *Rossiter* v. *Miller* (1878), 3 A. C. 1124; 48 L. J. Ch. 10; *Filby* v. *Hounsell* [1896], 2 Ch. 737; 65 L. J. Ch. 852; *Rouse* v. *Ginsberg* [1911], 55 Sol. J. 632.

(*w*) *Rossiter* v. *Miller, supra*; *Jones* v. *Daniel* [1894], 2 Ch. 332; 63 L. J. Ch. 562; *Cook* v. *Williams* (1897), 14 T. L. R. 31; *Bromet* v. *Neville* [1909], 53 Sol. J. 321; and see *Santa Fe Co.* v. *Forestal, &c. Co.* [1910], 26 T. L. R. 534; *Von Hatzfeldt-Wildenberg* v. *Alexander* [1912], 1 Ch. 284; 81 L. J. Ch. 184; *Rossdale* v. *Denny* [1921], 1 Ch. 57; 90 L. J. Ch. 204; *Coope* v. *Ridout* 1921, 1 Ch. 291; 90 L. J. Ch. 61; *Chillingworth* v. *Esche* [1924], 1 Ch. 97; 93 L. J. Ch. 129.

(*x*) *Hussey* v. *Horne-Payne* (1879), 4 A. C. 311; 48 L. J. Ch. 846; *Chipperfield* v. *Carter* [1895], 72 L. T. 487; Dart, 7th ed., 253.

(*y*) *Hussey* v. *Horne-Payne, supra*; *Bristol, &c., Bread Company* v. *Maggs* [1890], 44 Ch. D. 616; 59 L. J. Ch. 472; *Bellamy* v. *Debenham* [1891], 1 Ch. 412; 60 L. J. Ch. 166. See also *Lever* v. *Koffler* [1901], 1 Ch. 543; 70 L. J. Ch. 395.

(*z*) See Dart, 7th ed., 218 *et seq.*

Sporting rights.

(*a*) *Webber* v. *Lee* (1882), 9 Q. B. D. 315; 51 L. J. Q. B. 485; but *semble* if a right to shoot over land is merely a personal licence of pleasure (*e.g.*, where

tenant's fixtures,(*b*) or shares in a mining company worked on the cost-book principle: *Powell* v. *Jessopp* (1856), 18 C. B. 336; 25 L. J. C. P. 199; or shares in a railway company, is not: *Duncuft* v. *Albrecht* (1841), 12 Sim. 189.

As to timber and growing crops.

With regard to timber and growing crops, the rule is, that whatever property of this kind would, under the law in force before 1898, upon the death of an owner of land have gone to his executors as emblements is not within the section. Upon this principle it has been decided (*c*) that the section does not apply to an agreement for the sale of growing crops of potatoes: *Evans* v. *Roberts* (1826), 5 B. & C. 829; 4 L. J. (O.S.) K. B. 313; wheat, or barley: *Jones* v. *Flint* (1839), 10 Ad. & Ell. 753; 9 L. J. Q. B. 252; these being produced by the labour and industry of the cultivator. It is immaterial whether the crops are to be gathered by the vendor or the purchaser. But standing timber, fruit on a tree, growing grass,(*d*) and the like, are considered natural growths and part of the land, until severed from it. If, then, timber or a crop of fruit or grass is sold while growing, and it is intended that it shall remain on the land and derive further nutriment and benefit therefrom, and be eventually cut or gathered by the purchaser, part of the subject-matter of the contract is an interest in land, and the case is within the section. If, however, the thing sold is to be delivered by the vendor, and the purchaser has no interest in it until severed, or if it is to be removed, whether by the purchaser or vendor, at once or so soon afterwards that any further benefit to it from its remaining on the land does not appear to be intended, then the sale is of a mere chattel.(*e*)

Agreement comprising land and personal chattels.

An agreement for the sale of land and personal chattels, which is void as to the land as not complying with the section, is void

there is no right to take away the game: Gale, 9th ed., 3), and not of profit, the section does not apply (S. C.); and see *Wickham* v. *Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153.

(*b*) *Lee* v. *Gaskell* (1876), 1 Q. B. D. 700; 45 L. J. Q. B. 540. See also *Thomas* v. *Jennings* [1896], 75 L. T. 274; 66 L. J. Q. B. 5.

(*c*) See generally on this subject, Dart, 7th ed., 226 *et seq.*

(*d*) *Crosby* v. *Wadsworth* (1805), 6 East, 602. Although the above-mentioned things cannot in strictness be said to be produced spontaneously yet the expense and labour, employed in their original planting or sowing, bears so small a proportion to their natural growth that they are not considered *fructus industriales*.

(*e*) *Marshall* v. *Green* (1875), 1 C. P. D. 35; 45 L. J. C. P. 153 (standing timber). See observations on this case in *Lavery* v. *Pursell* (1888), 39 Ch. D. 508; 57 L. J. Ch. 570 (building materials of standing house); Dart, 7th ed., 227.

also as regards the chattels, unless the agreement forms two distinct contracts.(*f*)

The Effect of Part Performance.

What is part performance.

It is a settled rule of the court to decree specific performance of a verbal agreement to sell or lease land, notwithstanding the section, where there has been part performance, *i.e.*, some act resulting from the agreement and unequivocally referable to it, which so changes the position of the parties that one of them would suffer detriment if the agreement were not carried out.(*g*)

Principle on which doctrine rests.

The doctrine of part performance rests on the principle that equity will not permit the section to be an instrument of fraud, and that it would be unjust to allow a person who has taken advantage of a contract to refuse to perform his part of it. This must not be taken to mean that the court can, on the ground of a supposed fraud or injustice, overrule the express terms of an Act, but that, whenever there are circumstances which enable the court to enforce the contract, without infringing the section, it avails itself of those circumstances in order to prevent fraud or injustice : see *Maddison* v. *Alderson* (1883), 8 A. C. 467 ; 52 L. J. Q. B. 737. The section, as reproduced, expressly refers to part performance, and confirms the view hitherto adopted.

Delivery of possession.

The common instance of an act of part performance is delivery of possession. The acknowledged possession by a stranger of the land is not explicable except on the supposition, and is therefore evidence, of some agreement, and the court is at liberty, without infringing the section, to enquire what are the terms of that agreement.(*h*) If at the time of the contract for sale the purchaser was already in possession as tenant, the court cannot interfere, because in that case the possession is explicable without supposing any agreement ; but if, in the case of an existing lease, the lessor verbally agrees to renew at a higher rent, and the higher rent is actually paid, such payment, indicating a change

or change of tenure, is sufficient.

(*f*) Dart, 7th ed., 229 and cases there cited.

(*g*) *Maddison* v. *Alderson* (1883), 8 A. C. 467 ; 52 L. J. Q. B. 737 ; *Dickinson* v. *Barrow* [1904], 2 Ch. 339 ; 73 L. J. Ch. 701 ; *Rawlinson* v. *Ames* [1925] Ch. 96 (alterations in flat).

(*h*) *Morphett* v. *Jones* (1818), 1 Sw. 172 : L. P. Act, 1925, s. 40, does not make a parol contract void, but only provides that no action shall be brought to charge a person upon it. When there has been an overt act afterwards, such as delivery of possession, the equity arises out of this overt act, and not out of the parol agreement taken by itself.

of tenure, has been held equivalent to a change of possession: *Miller* v. *Sharp* [1899], 1 Ch. 622; 68 L. J. Ch. 322.

Payment of part of the purchase-money not sufficient.

The payment of part of the purchase-money, or even (according to the balance of judicial authority) of the whole of it, is not an act of part performance such as will take a case out of the section. Payment of money is an equivocal act, and not (in itself) indicative of any contract affecting land.(*i*)

Acts not changing the position of the parties insufficient.

Payment of rent in advance.

So, acts merely auxiliary to a contract, which do not change the position of the parties, *e.g.*, the delivery of an abstract, the measuring of the land, are not part performance within the meaning of the rule.(*j*) Payment of rent in advance, in respect of a parol agreement for a lease, is not a sufficient act of part performance unless the lessee takes possession: *Chaproniere* v. *Lambert* [1917], 2 Ch. 356; 86 L. J. Ch. 726.

After 1925 leases take effect without actual entry; the doctrine of *interesse termini* has been abolished: L. P. Act, 1925, s. 149; but this does not validate an agreement which depends for its force on physical possession being taken.

Whether expenditure of money in improvements sufficient, query.

Whether expenditure of money, without change of possession, takes a case out of the section, as where a landlord agrees to sell to a tenant in possession, or to grant him a new lease, and the tenant, on the faith of the agreement, spends money in building, will depend upon the circumstances attending such expenditure.(*k*) Such expenditure is not part performance where it is consistent with the present position of the parties, and does not necessarily indicate any change in that position: *Frame* v. *Dawson* (1809), 14 Ves. 386.

Contracts by limited owners.

A verbal agreement by a tenant for life to grant a lease in exercise of a power in a settlement, followed by delivery of possession and expenditure by the intended lessee, cannot be enforced against the remainderman unless it can be shown that such expenditure was permitted by the latter with knowledge that the agreement was only a verbal one.(*l*) It is conceived that this rule might in some cases be applied to an agreement not in writing entered into by a tenant for life under the powers

(*i*) See *Humphreys* v. *Green* (1882), 10 Q. B. D. 148; 52 L. J. Q. B. 140; *Miller* v. *Sharp*, *supra*.

(*j*) Dart, 7th ed., 1038, 1039.

(*k*) *Sutherland* v. *Briggs* (1841), 1 Hare, 26; 11 L. J. Ch. 36; *Williams* v. *Evans* (1875), 19 Eq. 547; 44 L. J. Ch. 319; and see *Lester* v. *Foxcroft* (1700), Colles' P. C. 108; 2 Wh. & T., 8th ed., 464.

(*l*) *Blore* v. *Sutton* (1817), 3 Mer. 237. See also *Trotman* v. *Flesher* (1861), 3 Giff. 1; *Landed Estates Co.* v. *Weeding* (1869), 21 L. T. 384; Dart, 7th ed., 1043; but *cf. Shannon* v. *Bradstreet* (1803), 1 Sch. & Lef. 52.

conferred by the S. L. Act, 1925; even leases by him for terms not exceeding three years must be in writing: *ib.*, s. 42 (5). Though s. 90 (relating to contracts) does not prescribe writing, this does not affect the general law enacted in L. P. Act, 1925, s. 40.

Alteration of a written contract in accordance with a parol variation.

The general rule is that parol variations of a written contract are not admissible as evidence of the terms of that contract, but where, owing to a common mistake, the terms of a verbal contract are not correctly reproduced in the written contract, the court has power under s. 44 of the Jud. Act, 1925, to rectify the written contract so that it correctly embodies the terms agreed and decree specific performance of a contract so varied: *Craddock* v. *Hunt* [1923], 2 Ch. 136; 92 L. J. Ch. 378; *U. S. A.* v. *Motor Trucks* [1924], A. C. 196.

SEC. II.—*The essentials of a valid contract for sale, as regards the capacity of the contracting parties.*

Competency of all persons (including aliens) to sell or purchase.

All persons, whether natural-born British subjects or aliens,(*m*) are competent to sell or purchase land or other property. The cases of incapacity to do so are exceptions to the general rule, and may arise either from a general personal incapacity to enter into a contract, as in the case of married women under the old law, infants, lunatics, defectives and convicts, or from some statutory disability, *e.g.*, the Mortmain and Charitable Uses Act, 1888, Part I, as affecting corporations, or from some fiduciary relation in which the proposed vendor and purchaser stand to each other. *Prima facie*, the parties to deeds are taken to be of full age: L. P. Act, 1925, s. 15. Contracts to deal with land will, after 1925, be made by the estate owner in whom the legal estate in question is vested (L. P. Act, 1925, ss. 1, 4, 10), unless title is to be made under ss. 7-9 and 90-91 or by a legal mortgagee who has power to convey the legal estate vested in the mortgagor: ss. 88-89.

Tenant for life and remainderman.

If the subject-matter of the contract is a life or reversionary interest, the person entitled to such equitable interest will enter into the contract; but a tenant for life and remainderman cannot together make title to the land: L. P. Act, 1925, s. 42. It would be necessary for the trustees of the settlement to execute a deed determining the settlement before title could be made in this way.

(*m*) Naturalisation Act, 1870; British Nationality and Status of Aliens Act, 1914, s. 17.

Married Women.

Contracts for sale by married women.

A woman married since 1882 has power to dispose of her own property, and therefore to enter into valid contracts for sale, as if she were a *feme sole*, and a woman married before 1883 has a like power as regards property acquired by her after 1882.(*n*) As to disclaimers, see L. P. Act, 1925, s. 168. A woman, whenever married, may dispose of property held for her separate use, unless restrained from anticipation: see *Re Fieldwick* [1909], 1 Ch. 1; 78 L. J. Ch. 153; M. W. P. Act, 1893, s. 1. She also has certain rights under the M. W. P. Act, 1870, and may dispose of property over which she has a general power of appointment; and a contract for sale will be deemed in equity a defective appointment, and will be aided accordingly.(*o*) After 1925, title to land will not be made under powers of appointment, a conveyance by an estate owner will be requisite.

Aided as a defective appointment.

Trust estates and settled land.

Marriage is no disability to a woman acting as trustee or personal representative: L. P. Act, 1925, s. 170. As a tenant for life she is in the position of a trustee and her husband will not have to join: S. L. Act, 1925, s. 25. A restraint on anticipation does not affect her statutory powers: *ib.* A married woman absolutely entitled subject to a restraint is within that Act: *ib.*, s. 20 (1) (x).

In cases not coming within the preceding notes, a married woman is incapable of disposing of real estate, except with the concurrence of her husband, but after 1925 the deed will not be acknowledged: L. P. Act, 1925, s. 167.

Contracts for purchase by married woman.

If a married woman, whatever may be the date of her marriage, enters into a contract to purchase land or other property, the contract may be enforced against her to the extent of any separate property belonging to her at the time or acquired afterwards.(*p*)

Infants.

Contract by infant for sale or purchase of land voidable.

An infant (*q*) cannot execute a conveyance of land, nor can he enter into a binding contract for the sale or purchase of

(*n*) See chapter on Husband and Wife in Vol. II.

(*o*) Sug., Pow., 8th ed., 536.

(*p*) See chapter on Husband and Wife in Vol. II.

Gavelkind.

(*q*) Formerly by the custom of gavelkind an infant on attaining the age of fifteen years could convey by feoffment on a sale for valuable consideration: *Re Maskell and Goldfinch* [1895], 2 Ch. 525; 64 L. J. Ch. 678; but this custom has been abolished. Ad. of E. Act, 1925, s. 45 (1); and conveyance by

land: *Flight* v. *Bolland* (1828), 4 Russ. 298. Such a contract is voidable by the infant, on attaining his majority. If the contract is not avoided within a reasonable time after the infant's majority it will be valid.(*r*) If he dies under age, his representatives have the like privilege.(*s*)

Contracts during minorities.

All contracts for the sale or other disposition of a legal estate in land should be made by the personal representatives or statutory owners or co-tenants for life of full age or trustees for sale who are the estate owners during the minority of the person beneficially interested: S. L. Act, 1925, ss. 19, 26-7; 2nd Sch., para. 3; L. P. Act, 1925, ss. 19-20; 1st Sch., Pt. III. An infant cannot be an estate owner: *ib.*, s. 1.

Consequences of avoiding contract by infant on coming of age.

An infant who, on coming of age, avoids a contract, is entitled to be repaid any money paid by him in part performance (*Hamilton* v. *Vaughan-Sherrin, &c., Co.* [1894], 3 Ch. 589; 63 L. J. Ch. 795) unless he has derived some advantage from the contract, and is unable to restore the other party to the same position as he would have been in if there had been no contract.(*t*) In accordance with this doctrine, it is apprehended that an infant who has paid a deposit on a contract for purchase is entitled to recover it if he refuses to complete when he comes of age.(*u*)

Infant cannot take advantage of his own fraud.

It has been said that equity will not allow an infant to take advantage of his own fraud: see *Cowern* v. *Nield* [1912], 2 K. B. 419; 81 L. J. K. B. 865. This doctrine would not make a contract for sale or purchase binding on an infant who has represented himself to be of full age, but it would probably prevent him from recovering money paid by him to the other party who was deceived by such representation.(*v*)

Infant's Relief Act, 1874.

The Infant's Relief Act, 1874, makes void all contracts entered into by infants for repayment of money lent or for goods supplied (other than necessaries), and which contracts were before the Act voidable.

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feoffment has also been abolished: L. P. Act, 1925, s. 51. Conveyances will operate to pass possession without actual entry: *ib.*

(*r*) *Edwards* v. *Carter* [1893], A.C. 360; 63 L. J. Ch. 100; *Carnell* v. *Harrison* [1916], 1 Ch. 328; 85 L. J. Ch. 321.

(*s*) Dart, 7th ed., 32.

(*t*) *Holmes* v. *Blogg* (1818), 8 Taunt. 508; *Ex parte Taylor* (1856), 8 De G. M. & G. 254; 25 L. J. Bk. 35.

(*u*) The dictum in Sug., 14th ed., 209, to the contrary seems incorrect.

(*v*) *Ex parte Unity, &c., Association* (1858), 3 De G. & J. 63; 27 L. J. Bk. 585; *Re Jones* (1881), 18 Ch. D. 109; 50 L. J. Ch. 673.

Infant's Relief Act does not apply to sale or purchase, but invalidates mortgage of land.

It has been held that s. 1 of this Act does not apply to contracts for sale or purchase of land: *Duncan* v. *Dixon* (1890), 44 Ch. D. 211; 59 L. J. Ch. 437. But it makes absolutely void a mortgage of land by an infant, even though the money advanced had been applied in the improvement of the property: *Nottingham, &c., Building Society* v. *Thurstan* [1903], A. C. 6; 72 L. J. Ch. 134.

Confirmation of mortgage by an infant.

Confirmation after his majority of a mortgage made by an infant will not revive it, but if the mortgage debt was advanced for the purchase of necessaries, the debt will remain valid though the mortgage is void. If a further advance is made forbearance to sue for the recovery of the debt may be taken into account and the debt can be consolidated: *Gardner* v. *Wainfur*, 89 L. J. Ch. 98.

But after 1925 an infant cannot hold a legal estate in land (L. P. Act, 1925, s. 1), hence this question as to the validity of a mortgage will be confined to mortgages of personal property and equitable interests in land.

Married infants.

Married infants have power to give receipts for income: L. P. Act, 1925, s. 21. See also Ad. of E. Act, 1925, s. 47 (1) (ii); and also for accumulations: T. Act, 1925, s. 31 (2) (i).

Power to order a sale of infant's land.

Formerly the court had no power to sell or mortgage an infant's land upon the ground that the sale would be to his advantage.(*w*) But the court sometimes, on the principle of salvage, directed the trustees to sell or mortgage a part in order to save the remainder, *e.g.*, for the repair or rebuilding of houses which are in a dangerous condition.(*x*) After 1925 the court will have power either under T. Act, 1925, s. 57, or S. L. Act, 1925, s. 64, to authorise almost any transaction relating to land.

Personal representatives and trustees.

An infant can no longer be a trustee or personal representative: L. P. Act, 1925, s. 20, 1st Sch., Pt. III, s. 3; Ad. of E. Act, 1925, s. 20. A trustee can now be appointed in place of an infant without an application to the court: T. Act, 1925, s. 36 (1).

Lunatics and Defectives.

Lunatics, their acts void, except in case of executed contract, where lunacy was not known to other party.

Lunatics and defectives are incapable of making a valid disposition of their property and of entering into binding contracts, subject, however, to this qualification, that a contract, whether executed or executory, entered into in good faith, is

(*w*) *Calvert* v. *Godfrey* (1843), 6 Beav. 97; 12 L. J. Ch. 305; *Re Montagu* [1897,] 2 Ch. 8; 66 L. J. Ch. 541; *Re Hambrough* [1909], 2 Ch. 620; 79 L. J. Ch. 19.

(*x*) *Re Jackson* (1882), 21 Ch. D. 786; *Re De Teissier's S. E.* [1893], 1 Ch. 153; 62 L. J. Ch. 552. See also *Re Willis* [1902], 1 Ch. 15; 71 L. J. Ch. 73; *Re Legh's S. E.* [1902], 2 Ch. 274; 71 L. J. Ch. 668.

not void by reason of one of the parties having been at the time of unsound mind, where such unsoundness is not known to the other party; this doctrine seems to apply to sales, mortgages, and other dealings with land or other property for valuable consideration.(*y*)

Defectives.

Defectives, as defined by s. 1 of the Mental Deficiency Act, 1913, who have been placed under restraint in accordance with the provisions of that Act, are subject to the same disabilities as a lunatic not so found, and the provisions of Pt. IV of the Lunacy Act, 1890, as regards the management and control of property applies to them: Mental Deficiency Act, 1913, s. 64.

Inquisition.

An inquisition finding a person a lunatic is conclusive until superseded, except as to testamentary capacity, of his incapacity to dispose of his property, make any binding contract, or execute any valid deed: *Re Walker* [1905], 1 Ch. 160; 74 L. J. Ch. 86. There would be a conflict of control if the lunatic could convey property *inter vivos* during the continuance of the control of the committee or receiver, hence a purchaser would never be safe in taking a conveyance from the committee or receiver: *ib.*

Testamentary capacity.

A lunatic, during a lucid interval, may make a valid will, even though the committee or receiver is still acting, because at the date from which the will takes effect, the date of the lunatic's death, the committee or receiver will have ceased to act. Hence there will be no conflict in control.

Heir-at-law of lunatic.

For the purpose of ascertaining whether the land of a lunatic or defective living on 1st January, 1926, who dies intestate, is to pass to his heir-at-law, he will not be deemed to have recovered his testamentary capacity unless his committee or receiver has been discharged (Ad. of E. Act, 1925, s. 51 (2)); this, however, has no bearing on the contractual capacity.

Powers conferred by Lunacy Act as to management and administration.

The Lunacy Act, 1890, contains provisions for the management and administration of the property of a lunatic, which provisions apply not only to lunatics so found by inquisition, but also to every person lawfully detained as a lunatic though not so found by inquisition, and to every person not so detained and not found a lunatic by inquisition with regard to whom it is proved to the satisfaction of the judge in lunacy that such person is, through mental infirmity arising from disease or age, incapable of managing

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(*y*) *Imperial Loan Co.* v. *Stone* [1892], 1 Q. B. 599; 61 L. J. Q. B. 449. See *Molyneux* v. *Natal Land, &c., Co.* [1905], A. C. 555, at 562; 74 L. J. P. C. 108; also *Re Pagani* [1892], 1 Ch. 236.

his affairs. In the case of a lunatic not so found, or defective, the judge may appoint a person (usually called a receiver) to exercise all or any of the powers of a committee.(*a*)

The judge may order any property of the lunatic or defective to be sold, mortgaged, dealt with, or otherwise disposed of, in order to raise money for any of the purposes therein mentioned: Lunacy Act, 1890, s. 117. He may also by order authorise and direct the committee or receiver to sell, make exchanges, grant leases of any property belonging to the lunatic or defective, surrender and accept surrenders of leases, execute any powers of leasing vested in a lunatic or defective having a limited estate, perform any contracts relating to the property of the lunatic entered into by him before the lunacy, surrender any onerous property belonging to the lunatic, and exercise any power vested in the lunatic for his benefit.(*b*)

The Lunacy Act, 1911, s. 1 (repealed by T. Act, 1925), transferred the powers to make vesting orders to the Chancery Division except in so far as they related to mortgagees not being also trustees,(*c*) but now under T. Act, 1925, s. 54, and the rules made thereunder provision is made for concurrent jurisdiction of the Ch. D. and the judge in lunacy.

Formerly sale money, &c., remained in equity real or personal estate according to nature of property sold.

In the case of any sale, mortgage, or other disposition of a lunatic's real property, the money arising thereby which was not applied under the powers of the Act belonged to the lunatic and his heirs, executors, administrators, next of kin, devisees, legatees and assigns for the same interest as he or they would have had in the property if such sale, &c., had not been made, and were real or personal estate according to the nature of the property sold, &c. : s. 123. The estate tail of a lunatic cannot be sold under the Lunacy Act, 1890, without the authority of the judge or master in lunacy. The proceeds of such a sale should still be resettled (see L. P. Act, 1925, s. 171) under the

(*a*) Lunacy Act, 1890, s. 116 ; a person detained under the Mental Deficiency Act, 1913, is within s. 116 ; *Re Whalley* [1906], 1 Ch. 565 ; 75 L. J. Ch. 328 ; the receiver may now be authorised to exercise the S. L. Act or other powers on behalf of the lunatic : Lunacy Act, 1908, s. 1 ; S. L. Act, 1925, s. 18.

(*b*) S. 120. Under this section and s. 117 the judge may authorise a sale in consideration of a perpetual rentcharge: *Re Ware* [1892], 1 Ch. 344; 61 L. J. Ch. 279 ; but not in consideration of shares in a company : *Re A. B.* [1899], W. N. 233.

(*c*) Lunacy Act, 1890, ss. 135-138 (so far as they relate to lunatic trustees except where the judge or master is given concurrent jurisdiction) ; and Lunacy Act, 1922, s. 2 (3), (4) and (5) have also been repealed by the T. Act, 1925, 2nd Sch.

One exception remaining.

direction of the judge so as not to prejudice the persons interested under the entail.(*d*) In other cases, save where the lunatic or defective was alive on the 1st January, 1926, no question of retaining the original nature of the property will be material: Ad. of E. Act, 1925, s. 51 (2).

Committee, &c., may execute deeds.

The committee of the estate, receiver, or such person as the judge approves, may, in the name and on behalf of the lunatic, execute and do all assurances and things for giving effect to any order under the Act (s. 124), but is not accountable in lunacy for money received after the lunatic's death: *Re Walker* [1907], 2 Ch. 120; 76 L. J. Ch. 580.

Sales where lunatic is tenant for life.

Where a tenant for life, or a person having the powers of a tenant for life under the S. L. Act, is a lunatic or defective the committee of his estate or receiver may, under an order of the judge in lunacy, exercise the powers of the Act in his name and on his behalf.(*e*)

When personal estate of lunatic was laid out in purchase of land, formerly it was usual to declare that land should be personal estate in equity.

The judge in lunacy has jurisdiction, in the administration of the lunatic's estate, to lay out personal estate in the purchase of land; formerly it was the practice in such cases to insert in the conveyance a declaration that the land purchased should be considered part of the lunatic's personal estate. The validity of such declaration without an express trust for sale was upheld by the House of Lords on the ground that when trustees without authority invest trust money in the purchase of land, the interest of the *cestui que trust* remains in equity personal estate, and that the court, if it chooses, may make it a condition of a similar investment on their part that the lunatic's right shall be the same as if it had been made without authority.(*f*) Now such a declaration will not be required: Ad. of E. Act, 1925, s. 46; unless the lunatic was living on 1st January, 1926: *ib.*, s. 51 (2).

Power to settle lunatic's property.

The judge in lunacy has power under L. P. Act, 1925, s. 171, to make a settlement of the property of a lunatic or defective in order to prevent for instance a *spes successionis* or beneficial interest (*e.g.*, of a person who as heir or otherwise would have become entitled on an intestacy) from being prejudiced, either

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(*d*) *Re E. D. S.* [1914], 1 Ch. 618; 83 L. J. Ch. 505.

(*e*) S. L. Act, 1925, s. 28; Lunacy Act, 1908, s. 1, which disposes of the points raised in *Re Baggs* [1894], 2 Ch. 416, n; 63 L. J. Ch. 612; *Re S. S. B.* [1906], 1 Ch. 712; 75 L. J. Ch. 522; *Re De Moleyns and Harris* [1908], 1 Ch. 110; 77 L. J. Ch. 9.

(*f*) *A.-G.* v. *Marq. of Ailesbury* (1887), 12 A. C. 672; 57 L. J. Q. B. 83. See *Baldwyn* v. *Smith* [1900], 1 Ch. 588; 69 L. J. Ch. 336.

on account of a sale and investment or a change of the rules governing devolution on an intestacy, or for any other sufficient reason.

All conveyances of legal estates belonging to a lunatic or defective will be made in his name : L. P. Act, 1925, s. 22. Conveyance.

Persons convicted of Treason or Felony.

By the common law, the real and personal property of a person convicted of treason or felony was forfeited to the Crown, or in the case of copyholds to the lord, either on attainder or on conviction according to the nature of the property ; but as regards freehold land on attainder the forfeiture was for a limited period only, subject to which the inheritance in fee (unless gavelkind) went to the lord by escheat. Escheat on an intestacy has been abolished, the Crown now takes the property as *bona vacantia* : Ad. of E. Act, 1925, ss. 45 (1) (*d*) 46 (1) (vi). Forfeiture and escheat as regards land had relation back to the commission of the offence. Moreover, the blood of a person attainted of treason or felony was supposed to be corrupted, so that he could not inherit land.(*g*) Forfeiture and escheat for treason and felony at common law. Corruption of blood.

Attainder, corruption of blood, forfeiture, and escheat for treason or felony (except for outlawry) are abolished by the Forfeiture Act, 1870. Under that Act, when a person is convicted of treason or felony, and judgment of death or of penal servitude is pronounced or recorded against him, he becomes incapable of alienating or charging any property, or making any contract, so long as he remains subject to the operation of the Act : ss. 6, 8. The custody and management of his property is committed to an administrator to be appointed by His Majesty, or by a person authorised in that behalf under His Majesty's sign manual. All the real and personal property belonging to the convict at the time of his conviction, or acquired by him while he remains subject to the operation of the Act, vests in the administrator. He has absolute power to let, mortgage, sell, convey, and transfer the property.(*h*) On the death or bankruptcy of a convict, or on his having undergone the full term of penal servitude, or obtaining a pardon, he ceases Abolished. Consequences of conviction according to present law. Power of administrator of convict's property.

(*g*) Goodeve, R. P., 5th ed., 370 ; 4 Byth. & Jarm., 3rd ed., " Forfeiture."
(*h*) Ss. 9, 10, 12 ; *Carr* v. *Anderson* [1903], 2 Ch. 279 ; 72 L. J. Ch. 534 ; *Re Gaskell and Walters* [1906], 2 Ch. 1 ; 75 L. J. Ch. 503.

to be subject to the operation of the Act, and thereupon all the property remaining vested in the administrator has to be restored to him or his representatives: ss. 7, 18, 29. The powers of disposition conferred by the Act of 1870 are saved by L. P. Act, 1925, s. 7 (3), hence remain operative in regard to legal estates. Property acquired by a convict while at large under a licence is excepted from the operation of the Act of 1870: s. 30. If no administrator is appointed, the justices of the peace may appoint an interim curator: s. 21.

Interim curator.

Convict's trust and mortgage estates.

Trust and mortgage estates vested in a convict do not pass to the administrator under the Forfeiture Act, 1870, but devolve as if he had not become a convict: T. Act, 1925, s. 65; but beneficial interests therein pass to the administrator.

Corporations.

Corporation can acquire land only by licence from Crown or under statute.

Land cannot be assured to or for the benefit of or acquired by or on behalf of any corporation in mortmain, otherwise than under the authority of a Royal licence, or of a statute for the time being in force. If any land is so assured otherwise than as aforesaid, it is forfeited to the Crown from the date of the assurance, subject to certain rights in favour of the mesne lord, if any: Mortmain Act, 1888, Pt. I.

Exemption of assurance of property for educational purposes from restrictions under the Mortmain Acts.

By the Ed. Act, 1921, s. 117, an assurance of land, as defined by the Mortmain Act, 1888, s. 10, or of personal estate to be laid out in the purchase of land, for educational purposes, whenever made, is exempt from all restrictions in mortmain.

Joint stock company may hold lands.

A joint stock company registered under the Companies (Consolidation) Act, 1908, is thereby empowered to hold lands, subject to a restriction, as regards companies formed for the purpose of promoting art, science, religion, charity, or any other like object not involving the acquisition of gain by the company or the individual members thereof, that they cannot, without the sanction of the Board of Trade, hold more than two acres: ss. 16, 19. Though a fee simple held by a corporation will determine if the corporation is dissolved, it is treated as a fee simple absolute, hence a corporation may have a legal estate: L. P. Act, 1925, s. 7 (2). And on the dissolution the court may make a vesting order in respect of it: *ib.*, s. 181.

Dissolution of a corporation, effect on fee simple.

Corporations entitled to hold and may alienate unless restricted by statute.

A corporation entitled by statute or Royal Charter or licence in mortmain to hold land has, at the common law, a general right of alienation: *Colchester Corpn.* v. *Lowten* (1813), 1 V. & B. 226;

but this right has, as regards ecclesiastical and municipal corporations, and in certain other cases, been restricted by statute.(*i*)

Contracts by corporations.

Under the old law a contract by a corporation had to be under their common seal, but, unless a contract under seal was prescribed by statute, this rule was subject to the following exception. Where the purposes for which a corporation was created rendered it necessary that the work should be done or goods supplied, and the work was authorised or the goods supplied by the directions of the proper authority, and accepted by the corporation, there was a contract to pay implied by the acts of the corporation. The corporation could not escape their obligation under the contract on the ground of mere absence of a formality or want of a seal.(*j*) Now under s. 74 (2) of the L. P. Act, 1925, the governing body of a corporation aggregate may, by resolution, appoint an agent to execute an instrument not under seal. The general rule as to corporations had been previously modified in the case of public companies formed under the C. C. C. Act, 1845, and also as to companies formed under the Companies (Consolidation) Act, 1908. The former Act, s. 97, enabled the directors, or any two of them, to sign a contract on behalf of the company. And by the Companies (Consolidation) Act, 1908, s. 76, it was provided that any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, might be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company.

Corporation sole.

Contracts expressed to be made with a corporation sole when there is a vacancy can be enforced, accepted, disclaimed or renounced when the vacancy is filled : L. P. Act, 1925, s. 180 (3).

Execution of documents and powers of attorney.

Wide facilities for execution of instruments by or on behalf of corporations, whether acting for themselves or as attorneys, are conferred by L. P. Act, 1925, s. 74.

Trustees and other Persons in a fiduciary position.

Purchase by a trustee from beneficiary liable to be set aside.

It is a rule that a purchase by a trustee from his beneficiary although not necessarily void, will be set aside at the instance

(*i*) See *Davis* v. *Leicester Corpn.* [1894], 2 Ch. 208, 228 ; 63 L. J. Ch. 440 ; also Municipal Corporations Act, 1882, ss. 108, 109 ; *Re Plymouth Corporation and Walter* [1918], 2 Ch. 354 ; 87 L. J. Ch. 635.

(*j*) See *Douglas* v. *Rhyl U. D. C.* [1913], 2 Ch., at p. 414 ; 82 L. J. Ch. 537 ; *Faraday* v. *Tamworth Union*, 86 L. J. Ch. 436 ; also *Baker* v. *Holme Cultram U. D. C.*, 85 L. J. K. B. 799.

What must be proved, in order to support purchase.

of the vendor, unless the purchaser satisfies the court, not only that the price was adequate, but that, before the contract was entered into, the fiduciary relation between the parties was shaken off, *quoad* the property forming the subject of the purchase, with the consent of the vendor freely and voluntarily given after full information communicated to him by the trustee on all matters affecting its value; in determining whether the fiduciary relation was effectually shaken off, the court will jealously examine all the circumstances, having regard in particular to the difficulty of ascertaining whether the trustee having acquired knowledge in that character has given the full benefit of it to the beneficiary. In other words, the court must be satisfied that the beneficiary was in as favourable a position as regards the negotiations as if the fiduciary relation had never existed: *Dougan* v. *Macpherson* [1902], A. C. 197; 71 L. J. P. C. 62; see also L. P. Act, 1925, s. 72.

Who are not within rule.

The rule does not apply to a purchase by a mortgagee from a mortgagor: *Knight* v. *Marjoribanks* (1849), 2 Mac. & G. 10. Nor does it preclude a tenant for life from purchasing settled land, for by the S. L. Act, 1925, s. 68, the trustees of the settlement will be the vendors. As the legal estate in the settled land will be already vested in the tenant for life, a purchase by him will be completed by means of a deed of discharge showing that the land is no longer settled. Nor does it apply to a person who has ceased to be a trustee for a considerable period: *Re Boles* [1902], 1 Ch. 244; 71 L. J. Ch. 130.

Parent, guardian, solicitor, &c.

The rule applies to a sale to himself by a mortgagee selling under his power of sale: *Hodson* v. *Deans* [1903], 2 Ch. 647; 72 L. J. Ch. 751. Also to a parent or guardian purchasing from his child or ward who has lately come of age, and to a solicitor or other person in a confidential position purchasing from his client.(*k*) Where the vendor's law agent purchased, nominally for another, but really for himself, the mere concealment of the fact that he was the real purchaser was held sufficient to vitiate the sale, even if fair in other respects: *McPherson* v. *Watt* (1877), 3 A. C. 254. This principle applies to a purchase by the solicitor of a bankrupt from the trustee in bankruptcy: *Luddy's Trustee* v. *Peard* (1886), 33 Ch. D. 500; 55 L. J. Ch. 884.

(*k*) *Savery* v. *King* (1856), 5 H. L. C. 627; 25 L. J. Ch. 482; *Tomson* v. *Judge* (1855), 3 Drew. 306; 24 L. J. Ch. 785; *Gibbs* v. *Daniel* (1862), 4 Giff. 1.

Sale by a solicitor trustee to a client.

A solicitor who sells to a client is not discharged from the duty of making full disclosures by reason of his being a trustee: *Moody* v. *Cox and Hatt* [1917], 2 Ch. 71; 86 L. J. Ch. 424.

Employment of separate solicitor.

In the case of a purchase by a solicitor, it is not sufficient that the client is advised by a separate solicitor, unless the latter is fully aware of all the circumstances and competent to give the client all necessary information: *Wright* v. *Carter* [1903], 1 Ch. 27; 72 L. J. Ch. 138.

Proceedings to set aside transactions.

Proceedings to set aside a sale on the ground of confidential relations between the parties ought to be instituted within a reasonable time: *Clanricarde* v. *Henning* (1861), 30 Beav. 175; 30 L. J. Ch. 865. If the sale is set aside, the purchaser is entitled to have back his purchase-money with interest, and he must account for any profits received, but without interest: *Silkstone, &c., Co.* v. *Edey* [1900], 1 Ch. 167; 69 L. J. Ch. 73. Where the purchaser was a solicitor, it was held that he must prove payment of the purchase-money by better evidence than the receipt in the deed and in a memorandum indorsed upon it.(*l*)

Conveyances to self, &c.

Though under s. 72 (3) (4) of the L. P. Act, 1925, a conveyance may be made by a person to himself or by two or more persons (whether or not being trustees) to any one or more of themselves, still it is recognised that the conveyance may, on account of a fiduciary relationship, be set aside. As to covenants with self and others, see s. 82.

As to gifts *inter vivos* to solicitors, &c.

A gift *inter vivos* of any kind from a ward to his guardian or a client to his solicitor, or of trust property from a beneficiary to his trustee made while such relation subsists, cannot generally be sustained, and the same rule applies to other confidential relations.(*m*) But if the donor intentionally abides by the gift after the confidential relation has ended, it cannot be impeached after his death.(*n*) Nor does this rule apply to a gift by will, because it is the province of the Probate Division of the High Court to determine the question of fraud or undue influence as affecting any particular bequest. If a will is once admitted to probate, the court could only interfere by fixing a trust on the

Wills.

(*l*) *Gresley* v. *Mousley* (1862), 3 D. F. & J. 433; 28 L. J. Ch. 620. See *Bateman* v. *Hunt* [1904], 2 K. B. 530, 538; 73 L. J. K. B. 782.

(*m*) *Hatch* v. *H.* (1804), 9 Ves. 292 and *cf. Re Coomber* [1911], 1 Ch. 723; 80 L. J. Ch. 399. See Voluntary Settlements, Vol. II.

(*n*) *Mitchell* v. *Homfray* (1882), 8 Q. B. D. 587; 50 L. J. Q. B. 460. See *Tyars* v. *Alsop* (1889), 5 T. L. R. 242.

legacy in question, which it would not do merely because of the existence of the confidential relation.(*o*)

Sale by trustee to himself.

Trustees cannot sell to one of themselves; if the sale cannot be effected by means of directions given by the beneficiaries who are separately represented the contract should be made subject to the approval of the court. The exception is a tenant for life: S. L. Act, 1925, s. 68.

SEC. III.—*The obligations arising under an open contract for sale of land, and how far they should be qualified by special conditions.*

As to the Vendor's Title.(*p*)

Vendor bound to show good title. What involved in this obligation.

A vendor of land is bound to show a good title for the statutory period.(*q*) In ordinary cases of freehold land the statutory period is reduced to thirty years: L. P. Act, 1925, s. 44 (1); this section supplies the statutory provisions as to commencement of title. As regards legal estates the basis is shifted from powers to estates. This obligation involves, save in the case of land registered with an absolute or good leasehold title (as to which, see L. R. Act, 1925, s. 110), the delivery to the purchaser of an abstract of title, the production of all deeds and documents stated in the abstract (not being instruments of record), the identification of the property agreed to be sold with the property comprised in the several documents, and the proof by proper evidence of all matters of fact forming a link in the chain of title.

Registered land.

Where the land is registered with a possessory title, then, as respects the title, before the date of first registration, the same rules apply as if the land were not registered. As from the date of first registration, the purchaser is only concerned with entries on the register, but as in the case of unregistered land the purchaser must satisfy himself by local enquiries in regard to matters, called "overriding interests" (see L. R. Act, 1925, s. 70), which would not appear on an abstract. Where the land is registered with a qualified title the purchaser must attend to the matters

(*o*) *Hindson* v. *Weatherill* (1854), 5 D. M. & G. 301; 23 L. J. Ch. 820. See also *Walker* v. *Smith* (1861), 29 Beav. 394; *Parfitt* v. *Lawless* (1872), L. R. 2 P. 462; 41 L. J. P. 68.

(*p*) See Dart, 7th ed., 315 *et seq.*

(*q*) See *Re Hucklesby and Atkinson* [1910], 54 Sol. J. 342; *Re Nichols & Von Joel* [1910], 1 Ch. 43; 79 L. J. Ch. 32.

which are excepted from the effect of registration. Where a restriction is entered on the register the purchaser must see that the terms of the restriction are complied with. Registration with a good leasehold title is on the same footing as registration with an absolute title, save that no guarantee is given that the lessor had power to grant the lease.

Obligations of vendor modified by statutory provisions

The obligations of a vendor of land as regards the commencement and evidence of his title have been modified by L. P. Act, 1925, ss. 42-50, see also the examples of abstracts given in the 6th Sch. to that Act, and pp. 125 *et seq. infra*. The provisions of that Act apply to all contracts entered into after 1925. See also the form (applicable to contracts by correspondence) prescribed under L. P. Act, 1925, s. 46; and the General Conditions of 1925, pp. 326, 331.

General Conditions of 1925.

Where a purchaser relies on a title commencing as prescribed by law he is not affected with notice of any matter prior thereto unless he actually enquires into the title prior to that date: L. P. Act, 1925, s. 44 (8).

In regard to contracts made after 1925, an intended lessee or assign of a leasehold interest, relying on the statutory provisions respecting the non-production of the title to the reversion, is similarly protected: *ib.*, sub-s. 5.

As to expense of abstract;

The word "abstract," in s. 45 (4) of the L. P. Act, 1925, does not relieve the vendor from the obligation of furnishing at his own expense a proper abstract of his title for the statutory period, whether the documents forming that title are in his possession or not.(*r*) Documents in the possession of a trustee or mortgagee of the vendor are, as respects the expense of production, treated as being in the possession of the vendor: L. P. Act, 1925, s. 45 (4). Where the lease of a house which was the subject of sale contained a covenant by the lessee to complete the house to the satisfaction of the lessor's surveyor, it was held that the vendor must produce the surveyor's certificate at his own expense, such certificate not being an evidence of title, but part of the title itself: *Re Moody and Yates* (1885), 30 Ch. D. 344; 54 L. J. Ch. 886. On the other hand, a purchaser has been held bound to pay the expenses of searching for a document forming the root of the vendor's title, the vendor having stated, in reply to a requisition, that he did not know where

of completing title;

of search for important document.

(*r*) *Re Johnson and Tustin* (1885), 30 Ch. D. 42; 54 L. J. Ch. 889; *Re Stamford, &c., Co. and Knight* [1900], 1 Ch. 287; 69 L. J. Ch. 127. See also cases collected in 1 Wolst. & Cherry, 11th ed., 208-9.

the document was, although the contract contained no intimation that there was any difficulty about procuring its production.(*s*)

As to deeds in possession of mortgagee.

Deeds in the possession of the vendor's mortgagee or trustee are treated as being in the vendor's possession.(*t*)

Right of purchaser to delivery of deeds on completion not affected.

The enactment relates only to the expense of production and inspection, and does not affect the ordinary right of a purchaser to have the deeds delivered to him on completion, though the obtaining of the deeds for this purpose may cause the vendor trouble and expense: *Re Duthy and Jesson* [1898], 1 Ch. 419; 67 L. J. Ch. 218.

Where documents should be produced.

Documents treated as being in the vendor's possession should be produced at his own residence, or at some convenient place near the property, or in London (*u*), *e.g.*, the office of his solicitor or his solicitor's London agents.

When a condition should be inserted as to commencement of title.

When the vendor has in his possession a deed thirty years old which would form a good root of title, and the title to the legal estate is by the subsequent documents, with the aid of 1st Sch., Pt. II, of the L. P. Act, 1925, and S. L. Act, 1925, 2nd Sch., which place the legal estate in the person who ought to have it, duly and regularly deduced therefrom, the abstract should be made to commence with that deed. Otherwise a special condition must be inserted making the title commence with a document of more recent date. To insure against an oversight, it is usual and proper to fix in all cases the date of commencement. In the case of freehold land registered with an absolute title or leasehold land registered with a good leasehold title, no commencement of title will be fixed by the contract: L. R. Act, 1925, s. 110.

Nature of deed forming root of title should be stated.

If it is proposed to commence the title with a deed less than thirty years old, not being a conveyance on a sale, the nature of the deed should be stated. In a case where there was no such statement, and the deed was a voluntary one, the condition was held to be misleading.(*v*)

(*s*) *Re Stuart and Olivant* [1896], 2 Ch. 328; 65 L. J. Ch. 576. And see *Re Conlon and Faulkener* [1916], 1 I. R. 241; *Re Wright and Thompson* [1920], 1 Ch. 191; 89 L. J. Ch. 66.

(*t*) L. P. Act, 1925, s. 45 (4), overruling *Re Willett* (1889), W. N. 66 60 L. T. 735.

(*u*) Dart, 7th ed., 481.

(*v*) *Re Marsh and Granville* (1883), 24 C. D. 11; 53 L. J. Ch. 81. This is because a purchaser for value is presumed to have investigated the title, while a volunteer is not.

Conditions restricting right to enquire about early title of two kinds, one allowing, the other precluding, objections *aliunde*.

Many cases have been decided as to the construction of conditions restricting the right of the purchaser to make enquiries about the title before a certain date. In some cases the condition has been held merely to preclude requisitions being made on the vendor, as in *Waddell* v. *Wolfe* (1874), L. R. 9 Q. B. 515 ; 43 L. J. Q. B. 138; where on a sale of leasehold property it was stipulated that no requisition or enquiry should be made respecting the lessor's title, and it was held that this did not preclude the purchaser from showing *aliunde* that the lease was invalid. In other cases the condition has been held to mean that the title is to be accepted without objection. The following are instances of the latter kind, viz. :—

Instances of latter kind.

(1) a condition that the purchaser shall accept such title as the vendor has, or shall accept the vendor's title without dispute ; (*w*)

(2) a condition that the lessor's title " will not be shown and shall not be enquired into " : *Hume* v. *Bentley* (1852), 5 De G. & S. 520 ; 21 L. J. Ch. 760 ;

(3) a condition that the title prior to a certain date " shall not be required, investigated or objected to " : *Re Nat. Prov. Bank and Marsh* [1895], 1 Ch. 190; 64 L. J. Ch. 255 ;

(4) a condition on the sale of a leasehold property that the purchaser shall make no objection or requisition in respect of the intermediate title between the lease and a certain deed of assignment, and shall " assume that the assignment vested in the assignee a good title " : *Re Scott and Alvarez* [1895], 2 Ch. 603 ; 64 L. J. Ch. 821.

So far as these conditions conflict with L. P. Act, 1925, s. 42, they would be void.

It is generally considered that the statutory condition in s. 45 (1) of the L. P. Act, 1925, comes within the former class.(*x*)

Condition as to legal estate void.

A condition that an outstanding legal estate shall be got in by or at the expense of a purchaser, or that no objection shall be taken on account of such an estate being outstanding is void : L. P. Act, 1925, s. 42 (3). Such a condition would show that title could not be made, for a purchaser must after 1925 acquire the legal estate.

(*w*) *Freme* v. *Wright* (1819), 4 Madd. 364 ; *Wilmot* v. *Wilkinson* (1827), 6 B. & C. 506 ; 5 L. J. (O. S.) K. B. 196 ; *Hume* v. *Pocock* (1866), 1 Ch. 379 ; 35 L. J. Ch. 731.

(*x*) See on this point *Re E. of Arran and Knowlesden* [1912], 2 Ch. 141 ; 81 L. J. Ch. 547.

Care to be taken in dealing with legal estates.

All outstanding legal estates are got in and vested in the persons who ought to have them by Pt. II of the 1st Sch. to that Act and S. L. Act, 1925, 2nd Sch., hence no injustice arises by reason of making void this common condition. In future the greatest care must be taken, on any transaction affecting a legal estate, to see that it is conveyed to the proper person. All this follows from the repeal (by the L. P. Act, 1922, repeated in 1925) of the Statute of Uses and from the general principles enacted in regard to legal estates, equitable interests and powers in Pt. I of the L. P. Act, 1925.

Where title is a bad holding one.

If a person who has purchased under a condition of the latter class discovers *aliunde* that, by reason of some fatal defect in the prior title, the vendor cannot give him even a good holding title, the court will not enforce specific performance. In the absence of fraud or intentional concealment, the contract is binding at law, and the purchaser cannot, on account of the defect, rescind the contract; but if he has paid a deposit, the court now has power to order it to be repaid: L. P. Act, 1925, s. 49 (2) [1895], 2 Ch. 603; 64 L. J. Ch. 821 overruling *Re Scott and Alvarez*, on this point.

Condition does not apply where vendor has disclosed defect, or where property already belongs to purchaser.

A condition that no earlier or other title shall be required or enquired into does not apply where the vendor has himself disclosed that his title is defective: *Smith* v. *Robinson* (1879), 13 Ch. D. 148; 49 L. J. Ch. 20. Where it was discovered that the property supposed to belong to the vendor really belonged to the purchaser, it was held that there was a common mistake; the purchaser was not bound to pay for what was already his: *Jones* v. *Clifford* (1876), 3 Ch. D. 779; 45 L. J. Ch. 809.

Condition requiring purchaser to assume truth of something.

A condition requiring a purchaser to assume something to be true is binding, though it may turn out to be untrue, unless the vendor was aware of its untruth at the date of the contract.(*y*)

Assumptions when acquiring settled land.

In the case of settled land a purchaser is entitled and bound to make various assumptions: S. L. Act, 1925, s. 110. In effect (subject to the express exceptions) that section enables the purchaser to deal with a certified tenant for life and certified trustees of a settlement. These exceptions are dealt with in the General Conditions of 1925; see the condition relating to settled land, substituting a certificate made by counsel, at the time

(*y*) *Best* v. *Hamand* (1879), 12 Ch. D. 1; 48 L. J. Ch. 503; *Re Banister* (1879), 12 Ch. D. 131; 48 L. J. Ch. 837. See *Blaiberg* v. *Keeves* [1906], 2 Ch. 175; 75 L. J. Ch. 464; *Re Sandbach and Edmondson* [1891], 1 Ch. 99; 60 L. J. Ch. 60. See also *Smith* v. *Watts* (1859), 4 Drew. 338; 28 L. J. Ch. 220.

when a vesting instrument is executed, for investigation of the equitable interests on which the instrument is based.

Vendor not protected, if he knows of a fatal defect and conceals it.

If a vendor knows that he cannot convey the property except subject to an easement or restrictive covenant or other outstanding interest or burden derogating from the absolute ownership, he is bound to disclose it, and cannot shelter himself under a condition making the title begin at a date subsequent to that of the instrument creating the easement, &c., or under a general condition which would be sufficiently comprehensive to cover it.(*z*)

Restrictive covenants and equitable easements.

Restrictive covenants and equitable easements when entered into or created after 1925 must be registered as land charges, otherwise they will, in favour of a purchaser, for money's worth, be overreached: L. C. Act, 1925, s. 10 (1), Class D.; *ib.*, s. 13 (2). Where the conditions provided that no objection should be taken in respect of a specified underlease, or in respect of "any other underlease" before a certain date, and it appeared that there was another existing underlease known to the vendor, it was held that he ought to have disclosed it, and had not relieved himself of this obligation by the general condition.(*a*)

Or that he has less estate than he professes to sell.

A similar principle would no doubt have been held to apply if a vendor, knowing that he had only a determinable estate, had contracted to sell the fee simple, and, in order to keep back the document showing what his estate really was, had stipulated that a document of more recent date should be the root of title.(*b*) Such a stipulation would, in fact, have been fraudulent, though now he could make title under the S. L. Act, 1925. Where a contract of sale was made subject to all drainage sewer, and other easements, if any, and before completion it was discovered that an underground watercourse existed, it was held that, although this was a latent defect and not covered by this condition, it was not so material as to prevent the vendor obtaining specific performance, even though he knew of its existence, provided the purchaser was granted compensation for the defect: *Shepherd* v. *Croft* [1911], 1 Ch. 521; 80 L. J. Ch. 170.

(*z*) *Heywood* v. *Mallalieu* (1883), 25 Ch. D. 357; 53 L. J. Ch. 492; *Nottingham, &c., Co.* v. *Butler* (1886), 16 Q. B. D. 778; 55 L. J. Q. B. 280; *Re Cox and Neve* [1891], 2 Ch. 109; *Re Nisbet and Potts* [1906], 1 Ch. 386; 75 L. J. Ch. 238.

(*a*) *Edwards* v. *Wickwar* (1865), 1 Eq. 68; 35 L. J. Ch. 48, not affected on this point by *Horn* v. *Beard* [1912], 3 K. B. 181; 81 L. J. K. B. 935

(*b*) See *Else* v. *E.* (1872), 13 Eq. 196; 41 L. J. Ch. 213; *Edwards* v. *McLeay* (1818), 2 Swanst. 287; *Carlish* v. *Salt* [1906], 1 Ch 335; 75 L. J. Ch. 175.

Specific performance will not be enforced where the purchaser is asked to assume what the vendor knows to be untrue : *Beyfus* v. *Lodge* [1925], 1 Ch. 350.

Legal estates.

The old authorities must be qualified by the new law laid down as to legal estates by the L. P. Act, 1925, Pt. I. See in particular the 6th Sch. giving examples of abstracts. In future the general principle that, if a purchaser obtains a legal estate without notice of an equitable interest, he takes free from the latter, will have a wider application, for by confining "legal estates" to fees simple absolute (including perpetual rent-charges) and terms of years absolute (*i.e.*, not depending on lives) the number of equitable interests capable of being overreached has been greatly increased.

Registration under L. C. Act.

In addition, equitable interests, such as restrictive covenants and equitable easements entered into or created after 1925, must be registered under the L. C. Act, 1925, or a purchaser will take free therefrom, whether or not he has notice ; see also L. P. Act, 1925, s. 2 (5).

Purchaser entitled to title made in the best way.

The most important amendment, from the point of view of a purchaser, is that under L. P. Act, 1925, s. 42, he is entitled, notwithstanding any stipulation, to have title made in the best way practicable ; the vendor is not entitled to rescind because this right is enforced. The effect will be to improve titles throughout the country.

Right of purchaser to discovery of documents in action for specific performance.

If a vendor brings an action for specific performance, the purchaser may allege by way of defence some definite objection to the title, *e.g.*, the existence of a covenant not to carry on a particular business on the property, and may obtain a discovery of the vendor's documents relevant to that issue, although prior in date to the stipulated commencement of title. But a general allegation that the documents would show a bad title, or of the existence of restrictive covenants, without specifying their nature, would be insufficient : *Jones* v. *Watts* (1890), 43 Ch. D. 574.

Statement that vendor had power to sell.

If the facts of a title are stated, and it is then stipulated that the purchaser shall take such title as those circumstances can confer upon the vendor, the purchaser will (subject to any statutory provision to the contrary) be bound to take the title, such as it is ; but where the conditions stated as a positive fact, and not as a conclusion of law from the circumstances detailed, that the vendor had a power to sell the fee, the purchaser was entitled to require the vendor to show his power to sell, as it

might have arisen from separate and independent sources: *Johnson* v. *Smiley* (1853), 17 Beav. 223; 22 L. J. Ch. 826.

Powers relegated to the background.

After 1925 titles will depend in the main on estates as opposed to powers. In fact, a power to sell settled land given to a person who is not the estate owner, could only operate as an additional power conferred on the tenant for life: S. L. Act, 1925, s. 108, or to constitute "statutory owners" in the absence of a tenant for life: *ib.*, s. 23. The repeal of the Statute of Uses, taken with s. 1 of the L. P. Act, 1925, relegates powers to a subsidiary place.

Condition where deeds are missing.

If any of the title deeds are missing a condition should be inserted to preclude objection on that account. The mere fact that title deeds are missing does not release the purchaser from his contract, if satisfactory secondary evidence is furnished to him within a reasonable time as to the contents, execution, and stamping of them: *Re Halifax, &c., Co. and Wood* [1898], 15 T. L. R. 106; 79 L. T. 536.

Right of purchaser to abatement of purchase-money where there is a partial defect of title.

If a vendor is able to make a good title to a part only of the property which he has agreed to sell, or to a limited interest only in it, the purchaser, as a general rule,(*c*) is entitled to take what the vendor can give him, with an abatement of his purchase-money by way of compensation: *Mortlock* v. *Buller* (1804), 10 Ves. 292, 315; approved, 2 Dow, 518. This doctrine has been applied:—

(1) where on a sale of the fee simple it turned out that the vendor had a life estate only, with remainder to another in fee: *Barnes* v. *Wood* (1869), 8 Eq. 424; 38 L. J. Ch. 683. This could not now arise, for the tenant for life, having power to sell the fee simple and the right to act as the trustee of the land, would be bound to make title to the fee simple, and if necessary obtain the appointment of S. L. Act trustees: L. P. Act, 1925, s. 42 (2).

(2) where on a sale of the fee simple it turned out that there was a prior life interest which the vendor could not get in,(*d*) here again the proper person to make title (if willing to do so) would now be the tenant for life in possession; and

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(*c*) The rule is liable to be modified by the terms of the contract, *e.g.*, a condition enabling the vendor to rescind unless the case comes within L. P. Act, 1925, s. 42 or 125. See *Re Jackson and Haden* [1906], 1 Ch. 412; 75 L. J. Ch. 226; *Merrett* v. *Schuster* [1920], 2 Ch. 240; 89 L. J. Ch. 399; *cf. Re Milner and Organ*, 89 L. J. Ch. 315.

(*d*) *Nelthorpe* v. *Holgate* (1844), 1 Coll. C. C. 203; *Barker* v. *Cox* (1876), 4 Ch. D. 464; 46 L. J. Ch. 62; *cf. Merrett* v. *Schuster*, *supra*.

(3) where on a sale of the entirety it turned out that the vendor had only an undivided moiety.(*e*) This could not arise after 1925, for all land formerly held in undivided shares is vested in trustees on trust for sale: L. P. Act, 1925, 1st Sch., Pt. IV; the creation of undivided shares in land is prohibited: *ib.*, ss. 1 (6); 34-38. If and when they take effect in possession a trust for sale of the entirety arises.

But the doctrine will not be applied where the compensation cannot be assessed with fairness to both parties, *e.g.*, where the defect consists in the property being subject to restrictive covenants of which the vendor was unaware at the date of the contract: *Rudd* v. *Lascelles* [1900], 1 Ch. 815; 69 L. J. Ch. 396.

Purchaser not bound to take part with abatement.

A purchaser, though entitled to do so, cannot be compelled to take a part instead of the whole, unless the part which the vendor cannot give him is so insignificant that the want of it must be immaterial. It is the tendency of the court to hold that a purchaser is entitled to have that which he contracted for.(*f*)

When notice of defective title precludes purchaser from objecting.

The legal implication arising out of the contract of sale, that the vendor must show a good title, might be rebutted by evidence that the purchaser knew that the title was defective before he entered into the contract: *McGrory* v. *Alderdale* [1918], A. C. 503; 87 L. J. Ch. 435. After 1925, there are certain matters which the vendor cannot contract out of; for instance, if a legal estate is outstanding he must get it in at his own expense; he cannot throw the expense of appointing S. L. Act trustees on to the purchaser. If he can make a title under the S. L. Act, 1925, or by virtue of a trust for sale without joining a person who is merely entitled to an equitable interest he must do so: L. P. Act, 1925, s. 42. If the contract expressly provides that the vendor shall show a good title, evidence of the purchaser's knowledge of a defect is inadmissible, as this would be allowing a written contract to be varied or contradicted by parol evidence. (*g*)

Obligations affecting a vendor.

Depreciatory conditions.

Trustees ought not to sell subject to depreciatory conditions, but a purchaser cannot object to the title on that account: T. Act, 1925, s. 13.

(*e*) *Hooper* v. *Smart* (1874), 18 Eq. 683; 43 L. J. Ch. 704. See also *M'Kenzie* v. *Hesketh* (1877), 7 Ch. D. 675; 47 L. J. Ch. 231; *Burrow* v. *Scammell* (1881), 19 Ch. D. 175; 51 L. J. Ch. 296.

(*f*) *Knatchbull* v. *Grueber* (1817), 3 Mer. 124, 141; *Re Arnold* (1880), 14 Ch. D. 270.

(*g*) *Re Gloag and Miller* (1883), 23 Ch. D. 320; 52 L. J. Ch. 654; *Cato* v. *Thompson* (1882), 9 Q. B. D. 616; *Ellis* v. *Rogers* (1885), 29 Ch. D. 661.

Where the abstract shows that the property has been conveyed to X. and Y. as joint tenants in equity as well as at law, or where such a conveyance is stamped with a ten shillings stamp, the purchaser is not affected with notice of any trust in favour of third persons: *Re Soden and Alexander* [1918], 2 Ch. 258; 87 L. J. Ch. 529. Under such a conveyance the land (not being settled land) would now be held on trust for sale: L. P. Act, 1925, s. 36.

Trusts in favour of third persons.

As to Leaseholds, including Property held by Underlease.

The statutory conditions contained in the L. P. Act, 1925, s. 44, apply to contracts relating to leasehold property made before or after the commencement of this Act, in the absence of any stipulation to the contrary; the purchaser need not contract out of these: *ib.*, sub-s. 5.

Statutory conditions as to leasehold property.

It follows that on a sale of property held by lease or underlease, the title will begin, in the absence of stipulation, with the lease or underlease. Where it is stipulated that the title is to commence with an assignment, the vendor must, it is conceived, furnish some evidence of the contents of the lease unless this is expressly negatived. If, by the terms of the contract, the purchaser, instead of taking an assignment of the lease, is to take an underlease, the title will begin with the lease, which the vendor will be bound to produce: *Gosling* v. *Woolf* [1893], 1 Q. B. 39.

Title to leaseholds begins with lease or underlease.

The purchaser of leasehold property under an open contract is not precluded by the above enactments from raising objections to the validity of a lease on grounds appearing on the face of it, or appearing *aliunde*: *Jones* v. *Watts* (1890), 43 Ch. D. 574.

Objection to lessor's title *aliunde*.

The purchaser should enquire of the vendor whether there are any restrictive covenants affecting the property, He is bound by such covenants as are registered under the L. C. Act, 1925, and is entitled to know the name of the person against whom the covenants have been registered.

When property offered for sale is part of a larger property held under one lease, the fact should be stated in the particulars, as otherwise a purchaser might object, on the ground that he would be liable to eviction under the condition of re-entry for breaches of covenant committed in respect of the remaining property. No such objection can be made if the fact is stated.(*h*) It is better to make title to part of the land comprised in a lease by means of an underlease, where the other part is

If it is held with other property under same lease, this should be stated.

(*h*) *Walter* v. *Maunde* (1820), 1 J. & W. 181; *Paterson* v. *Long* (1843), 6 Beav. 590; 13 L. J. Ch. 1.

retained by the vendor, instead of assigning the land at a rent which has not been apportioned with the consent of the lessor. If the apportionment is made with the consent of the lessor then the lease can be treated for the purposes of the sale as if it only contained the land on which the apportioned rent is imposed. As to the covenants implied when land is conveyed subject to part of a rent, not legally apportioned, see L. P. Act, 1925, s. 77. As to equitable apportionment of rent and remedies for non-payment of rent or breaches of covenant, see *ib.*, s. 190 (3).

Purchaser has notice of usual covenants in lease, but there must be no misrepresentation.

A purchaser of leaseholds will be deemed to have notice of the covenants and provisions in the lease if they are usual ones, but not if they are unusual, unless an opportunity has been given him of inspecting the lease before the sale (*Molyneux* v. *Hawtrey*, [1903], 2 K. B. 487 ; 72 L. J. K. B. 873), and if the particulars contain any misrepresentation (*Weston* v. *Savage* (1879), 10 Ch. D. 736 ; 48 L. J. Ch. 239) or important omission, calculated to mislead a purchaser,(*i*) he is not precluded from objecting merely because an inspection of the lease would have disclosed the real state of the case, nor by a stipulation that the vendor's title is accepted: *Re Haedicke and Lipski* [1901], 2 Ch. 666 ; 70 L. J. Ch. 811.

Renewable leaseholds.

On the sale of leaseholds which have been renewed from time to time, it was the practice to negative the right of the purchaser to call for the production of the surrendered leases. Perpetually renewable leaseholds have now been abolished by the L. P. Act, 1922, s. 145 ; those which existed on 1st January, 1926, have been converted into long terms of years by the 15th Sch. to the Act of 1922, as amended by the L. P. (Amendment) Act, 1924, 2nd Sch. Perpetually renewable copyholds are by the Act of 1922 converted into fees simple, provision being made for payment of compensation when the manorial incidents are extinguished.

An underlease should be described as such.

If the property offered for sale is an underlease, the fact should appear in the particulars or in the conditions, for if it is described as a lease *semble* the contract cannot be enforced.(*j*) The purchaser has a right to assume that he will be under no

(*i*) *Jones* v. *Rimmer* (1880), 14 Ch. D. 588 ; 49 L. J. Ch. 775 ; *Re Davis and Cavey* (1888), 40 Ch. D. 601 ; 58 L. J. Ch. 143.

(*j*) *Darlington* v. *Hamilton* (1854), Kay, 550 ; 23 L. J. Ch. 1000 ; *Blake* v. *Phinn* (1847), 3 C. B. 976 ; 16 L. J. C. P. 159 ; *Re Lloyds Bank and Lillington* [1912], 1 Ch. 601 ; 81 L. J. Ch. 386. Query whether the *Darlington Case* can be supported in view of the rights of the underlessee under L. P. Act, 1925, s. 146 (4).

liabilities except those created by the lease under which he holds, whereas, if there is a superior lease, he will, unless relief is given under L. P. Act, 1925, s. 146, be liable to be evicted by the superior landlord in the event of any breach of the covenants in the superior lease. It is conceived that it might make a difference if underlease included the whole of the property and the covenants in the two leases were identical, for the purchaser would be safe from eviction if he observed such covenants; on the other hand, he would, in the event of a breach, or an intended breach, have to settle with two landlords instead of one, and be to this extent in a worse position.

If head lease creates no right enforceable against underlessee, objection does not apply.

It is conceived that no objection could be made merely because the grantor of the lease, which is the subject of the purchase, was the owner of a chattel interest only in the land, *e.g.*, a long term of years subject to a nominal rent, and free from any covenant or condition of re-entry. In such a case the instrument creating the term would create no liability by which the purchaser could be affected directly or indirecly.

Mortgagee by demise will convey the term out of which the mortgage term is created.

A mortgagee of leaseholds, when selling under his statutory or express power of sale, conveys not only the mortgage term, but also the reversion affected by that term, unless it is expressly excepted with the leave of the court; the mortgage term merges in the reversion, or becomes extinguished: L. P. Act, 1925, s. 89 (1); but subject to the exception mentioned in sub.-s. 6.

Purchaser need not insist on a stipulation enabling him to inquire into lessor's title.

Formerly the statutory rules which precluded a purchaser, in the absence of stipulation, from requiring the production of the title to the freehold or leasehold reversion, did not exempt him from the application of the doctrine of constructive notice; now a purchaser is not affected with constructive notice of anything contained in any instrument prior to the statutory root of title: L. P. Act, 1925, s. 44 (5), overruling *Patman* v. *Harland* (1881), 17 Ch. D. 353. Nevertheless he is affected by notice of interests registered under the L. C. Act, 1925.

Property held for lives.

Where estates *pur autre vie* come within S. L. Act, 1925, s. 20 (1) (iv), (v), (vi), or (viii), title can be made under that Act (by the tenant for life or statutory owner) to the legal estate comprised in the settlement; but if the subject-matter of the sale is the life estate of the vendor or an estate *pur autre vie*, then evidence of the age of the vendor or other *cestui que vie* must be furnished to the purchaser at the vendor's expense. All estates depending on life are equitable interests: L. P. Act, 1925, ss. 1, 205 (1) (xxvii); 1st Sch., Pt. 1.

Easements and Restrictive Covenants.

Paramount easements and restrictive covenants an objection to title.

In what cases knowledge of purchaser precludes objection.

The existence of easements, restrictive covenants, or other burdens derogating from the absolute ownership of the property, constitutes a valid ground of objection to the title, if the purchaser did not know of them at the date of the contract; (*k*) and they would not be overreached by the conveyance to him, *e.g.*, in the case of restrictive covenants and equitable easements entered into or created after 1925, which are registered as land charges: L. C. Act, 1925, ss. 10, Class D.; 13 (2). If a vendor has agreed to make a marketable title or to sell free from incumbrances, he is bound to procure a release of all burdens of this kind, whether the purchaser was aware of them or not.(*l*)

Discharges of restrictive covenants.

Facilities are given by L. P. Act, 1925, s. 84, to obtain an order for the discharge or modification of a restrictive covenant; such a covenant can be released or modified by a tenant for life with the consent of the trustees of the settlement (S. L. Act, 1925, s. 58 (2)); a similar release can be given by charity trustees (*ib.*, s. 29); also by trustees for sale (L. P. Act, 1925, s. 28); or by personal representatives: Ad. of E. Act, 1925, s. 39.

Easements must be disclosed, notwithstanding general condition.

A general condition, that the property is sold subject to all easements affecting the same, does not except the vendor from the obligation of disclosing an easement of which he was aware: *Heywood* v. *Mallalieu* (1883), 25 Ch. D. 357; 53 L. J. Ch. 492; and subject to which the purchaser will take.

"Legal easements."

A "legal easement" must be one which is created for an estate in fee simple in possession or a term of years absolute, and the benefit of it must be annexed to some land: L. P. Act, 1925, s. 187. What is commonly called an easement in gross is on the same footing as a licence, and is treated as an equitable easement. In the case of legal easements no question of notice arises, nor need a legal easement be registered as a land charge.

Restrictive covenants did not bind purchaser without notice or any person claiming under him with notice.

As to restrictive covenants, the burden of them did not run with freehold land at law, and after the land affected by them had been acquired by a purchaser for value in good faith without notice, they could not be enforced in equity either against that purchaser or against any person claiming under him, whether the latter had notice of them or not. But a purchaser who after

(*k*) *Ellis* v. *Rogers* (1885), 29 Ch. D. 661; *Re Ebsworth and Tidy* (1889), 42 Ch. D. 23; 58 L. J. Ch. 665; see also *Re Gloag and Miller* (1883), 23 Ch. D. at p. 327; 52 L. J. Ch. 654.

(*l*) *Cato* v. *Thompson* (1882), 9 Q. B. D. 616; see *McGrory* v. *Alderdale Estates Co.* [1918], A. C. 503; 87 L. J. Ch. 435.

the contract discovered the existence of covenants of this kind could not be compelled to complete, because his title depended on the vendor's want of notice, and he might have found that he had bought a law suit.(*m*) Moreover, a purchaser who bought under a condition precluding him from requiring a forty years' title had constructive notice of any restrictive covenant contained in a deed less than forty years old, but dated before the stipulated root of title.(*n*)

Registration substituted for notice.

Where the restrictive covenant is entered into after 1925, the question of notice does not arise, but a purchaser for money's worth will take free therefrom unless it is registered as a land charge. Registration under the L. C. Act operates as notice: L. P. Act, 1925, s. 198.

As to other Incumbrances.

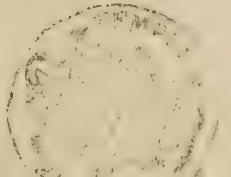
When property is subject to charges which cannot be paid off.

If the property is subject to any incumbrance which cannot be discharged, or overreached, such as a legal mortgage, legal term, legal rentcharge, a restrictive covenant, or an easement, whether legal or equitable, the conditions should so far as the law permits (see L. P. Act, 1925, s. 42), provide for this defect in the title. All the facts connected with such incumbrance should be accurately stated; and, if it is not likely to be enforced, it may be sufficient to bind the purchaser to make no objection on that account; in other cases it may be expedient to offer an indemnity to the purchaser, and to provide that he shall be satisfied therewith; but it is important that the terms and nature of the indemnity should be clearly stated. In the absence of special contract, a purchaser cannot be compelled to take a defective title with an indemnity, nor can a vendor be compelled to give an indemnity.(*o*) All family charges can be overreached, see S. L. Act, 1925, ss. 1, 20, 31-33, 72, 104 (3) (4); L. P. Act, 1925, s. 2; and as to consents required by trustees for sale: *ib.*, s. 26. Equitable charges (not secured by the deposit of the documents relating to the legal estate), when created for money's worth, can be overreached under S. L. Act, 1925, s. 21, or L. P. Act, 1925, s. 2, by the creation of a settlement or trust for sale *ad hoc*.

(*m*) *Nottingham, &c., Co.* v. *Butler* (1886), 16 Q. B. D. 778, 790; 55 L. J. Q. B. 280. *Cf. Re Handman and Wilcox* [1902], 1 Ch. 599; 71 L. J. Ch. 263.

(*n*) *Re Nisbet and Potts* [1906], 1 Ch. 386; 75 L. J. Ch. 238; and see *Abbey* v. *Gutteres* [1911], 55 Sol. J. 364; see now L. P. Act, 1925, s. 44.

(*o*) Dart, 7th ed., 1081; *Re Weston and Thomas* [1907], 1 Ch. 244; 76 L. J. Ch. 179.



Power for court to provide for incumbrances and to free land therefrom.

The L. P. Act, 1925, s. 50, enables the court on a sale or exchange to make an order discharging land affected, not merely the land to be sold or exchanged, from an incumbrance on sufficient provision being made to meet it by payment into court in the manner mentioned in that section. Thus, by payment into court, even a legal mortgage, or legal rentcharge, or a mortgage by deposit can be defeated. But L. P. Act, 1925, s. 42, does not prevent a vendor from contracting to sell a legal estate subject to another legal estate, legal charge or mortgage by deposit, though a mortgage of the latter class is never intended to remain on the title.

Perpetual rents and other legal annual charges.

A quit rent, chief rent, or any annual or periodical sum issuing out of land ; or a rent reserved on a sale, or made payable under a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes ; or a compensation rentcharge created as the consideration for the extinguishment of manorial incidents, may be redeemed at a price fixed by the Minister of Agriculture and in accordance with the provisions of s. 191 of the L. P. Act, 1925.(*p*) This section also provides for an apportionment of these rents or annual charges where the owner of the land desires to sell part of it freed therefrom without exonerating the remainder. This section should enable the titles to land in the Manchester and Bristol districts to be cleared of many overriding rents.

Mortgages of undivided shares.

Mortgages formerly affecting undivided shares in land are converted into equitable charges on the proceeds of sale of the land. Such mortgages will be overreached when the land is sold under the trust for sale : L. P. Act, 1925, s. 102 ; 1st Sch., Pt. IV.

Tithe rentcharge and land tax not incumbrances.

Tithe rentcharge, and land tax, are not incumbrances, so that if nothing is said about them in the contract, the purchaser takes the property subject to them, and can make no objection on that account.(*q*) They are treated as legal estates : L. P. Act, 1925, s. 1 (2).

As to Stamping of Documents.

Purchaser may require deed to bear proper stamp.

A purchaser is entitled to require that all the title deeds which have to be produced to him bear the proper stamp, but he is not concerned with the *ad valorem* stamp placed on a trust instrument creating a settlement after 1925 : S. L. Act, 1925,

(*p*) 1 Wolst. & Cherry, 11th ed., 450-4.
(*q*) See Dart, 7th ed., 393, 395.

s. 4 (3) (*e*) ; nor on any other trust instrument which has not to be produced to him : *ib.*, s. 110 (2) ; and as he is not concerned with the trusts affecting the proceeds of land held on trust for sale (L. P. Act, 1925, s. 27), he could not be concerned with the stamp on any separate instrument declaring the trusts of the proceeds. If any deed executed before the 17th May, 1888, is unstamped or insufficiently stamped, the conditions should provide that the expense of stamping shall be borne by the purchaser, if he requires it to be done. Such a condition would be void as to any deed dated after the 16th May, 1888 (Stamp Act, 1891, s. 117), and can seldom now be required, for it would mean that more than a thirty-seven years title was being shown.

As to Identification of Parcels.

Identification.

It is a necessary part of the deduction of a good title to provide satisfactory evidence of the identity of the parcels. To do this completely is often difficult, so that some provision making a purchaser accept a statutory declaration is generally introduced.

Where it was provided " that no further evidence of identity shall be required than what is afforded by the abstract or the documents therein abstracted," and the descriptions in the documents differed among themselves and from the descriptions in the particulars of sale, the purchaser was held entitled to further proof of identity : *Flower* v. *Hartopp* (1843), 6 Beav. 476 ; 12 L. J. Ch. 39.

Where it was provided " that the purchaser shall not require any further proof of identity than is furnished by the title deeds themselves," Kindersley, V.-C., observed, " I am of opinion that under this condition, if the deeds do not show identity, the purchaser cannot call for any other evidence ; but that, on the other hand, the contract is, in effect, that the deeds shall show identity, so that if they do not, a good title is not made " : *Curling* v. *Austin* (1862), 2 Dr. & Sm. 129.

Parcels in trust instruments.

As a general rule a purchaser from a tenant for life does not inspect trust instruments, but he may have to investigate the parcels in settlements and disentailing assurances made before 1925 : S. L. Act, 1925, s. 5 (4) ; see also as to freak settlements, ss. 9, 110 (2), proviso ; unless the General Conditions of 1925 are made applicable and a counsel's certificate is given at the time when the vesting instrument is executed.

As to the Description of the Property.

What the particulars should state.

The particulars of sale, or, on a sale by private contract, the agreement itself, should accurately describe the house or land which is the subject of sale, and, if the vendor is making title to less than the fee simple, the nature of that interest.(*r*) If the property is let to a tenant, the nature and terms of the tenancy, and the rent paid by him should be stated. If it is sold subject to any charge or obligation, subject to which the vendor is entitled to sell it,(*s*) this also should be stated; in short, the particulars should contain all such information as is necessary to inform the purchaser of the real nature of the property put up for sale.(*t*) There must be no wilful concealment of anything which it is material for the purchaser to know; no ambiguity in the description which is likely to mislead him.

Notice of incumbrances may put a purchaser on enquiry.

A sufficient indication that incumbrances exist, or that the terms of a tenancy are ambiguously or inaccurately stated, may put the purchaser on enquiry as to the exact nature of these incumbrances or the terms of the tenancies.(*u*)

Rule of equity as to right of purchaser in case of misdescription.

Before the Jud. Act, 1873, a misdescription rendered the sale void at law, but courts of equity would oblige the purchaser to accept the property with an abatement of the purchase-money by way of compensation, in any case where he would thereby get the substantial benefit of his contract.(*v*) The rules of equity are now the rules of every branch of the Supreme Court of Judicature.(*w*) As to matters which are not of the essence of the contract, see L. P. Act, 1925, s. 41.

Condition as to compensation for misdescriptions.

It is usual, however, to make express provision for misdescriptions by a condition of sale. One in common use provides that misdescriptions in the particulars shall not annul the sale or entitle either party to compensation. Sometimes it is provided that compensation to be fixed by arbitration shall be allowed.

Condition does not apply where mistake is wilful or affects the substance of the contract.

These conditions apply only to such errors as in their absence would invalidate the sale.(*x*) It is also settled that a vendor

(*r*) Dart, 7th ed., 150.

(*s*) For restrictions preventing a vendor from imposing certain obligations on a purchaser, and as to the inalienable rights of a purchaser, see L. P. Act, 1925, ss. 42, 43, 48, 75, 84, 88, 89, 153, 157, 183, 191, 199.

(*t*) Dart, 7th ed., 123.

(*u*) *Caballero* v. *Henty* (1874), L. R. 9 Ch. 447; 43 L. J. Ch. 635; *Clements* v. *Conroy* [1911], 2 I. R. 500.

(*v*) *Halsey* v. *Grant* (1806), 13 Ves. 73, 79, see *Rutherford* v. *Acton-Adams* [1915], A. C. 866; 84 L. J. P. C. 238

(*w*) Jud. Act, 1925, s. 44; Annual Practice notes to this section.

(*x*) *Leslie* v. *Tompson* (1851), 9 Hare, 268; 20 L. J. Ch. 561; Dart, 7th ed., 146.

cannot avail himself of such conditions where the mistake is wilful and therefore amounts to a fraud, or where the misdescription is on a material and substantial point so far affecting the subject of the contract that it may be reasonably supposed that, but for such misdescription, the purchaser would not have entered into the contract at all. In such a state of facts the purchaser may be considered as not having purchased the thing which is the subject of sale.(*y*)

Error as to quantity.

Where the property is described as containing a certain quantity without any qualification, and the actual quantity turns out to be less, the purchaser is, as a general rule, entitled to an abatement out of his purchase-money for the deficiency, whether there is, or is not, the usual condition as to compensation: *Hill* v. *Buckley* (1811), 17 Ves. 394, where the reason for this rule is given.

Effect of expressions "or thereabouts," "more or less," "by estimation," "et cetera."

Qualifying words such as "or thereabouts," "more or less," or "by estimation," will only cover slight errors. Thus a purchaser has been compelled to accept without compensation property described as containing by estimation forty-one acres, more or less, but really containing only thirty-six acres; (*z*) but not a farm described as containing "by estimation 349 acres, or thereabouts, be the same more or less," but which fell short of that quantity by 110 acres: *Portman* v. *Mill* (1826), 2 Russ. 570; 8 L. J. (O. S.) Ch. 161; nor property described as containing 753 square yards or thereabouts, but in fact containing only 573 square yards.(*a*) "*Et cetera*" will only include things of the same nature: *Re Walmesley* [1917], 1 Ch. 93; 86 L. J. Ch. 120.

Vendor not bound to disclose patent defects.

As regards patent or obvious defects in the state and condition of the property, such as a purchaser with ordinary diligence could discover for himself, *e.g.*, its want of repair, or bad state of cultivation, the vendor is not bound to mention them, but he must not studiously conceal them.(*b*)

(*y*) *Flight* v. *Booth* (1835), 1 Bing. N. C. 370; 4 L. J. (N. S.) C. P. 66; *Re Fawcett and Holmes* (1889), 42 Ch. D. 150; 58 L. J. Ch. 763; and see *Shepherd* v. *Croft* [1911], 1 Ch. 521; 80 L. J. Ch. 170; *Lee* v. *Rayson* [1917], 1 Ch. 613; 86 L. J. Ch. 405.

(*z*) *Winch* v. *Winchester* (1812), 1 V. & B. 375. It is doubtful whether this case would be followed in the present day, although cited without disapproval in *Joliffe* v. *Baker* (1883), 11 Q. B. D. 255, 273; 52 L. J. Q. B. 609.

(*a*) *Whittemore* v. *W.* (1869), 8 Eq. 603; 38 L. J. Ch. 17. See *Re Terry and White* (1886), 32 Ch. D. 14; 55 L. J. Ch. 345.

(*b*) *Ashburner* v. *Sewell* [1891], 3 Ch. 405 (right of way latent defect); *Yandle* v. *Sutton* [1922], 2 Ch. 199 (the defect must be visible).

Latent defects, when a ground for objection, or compensation.

The existence of an easement not actually visible, or arising by necessary implication from some fact discoverable by inspection of the property,(*c*) or known to the purchaser at the date of the contract, is an objection to the title enabling the purchaser to rescind the contract or to claim compensation under the ordinary condition, whether the vendor was aware of it or not: *Ashburner* v. *Sewell*, 1891, 3 Ch. 405; 60 L. J. Ch. 784. But as regards a latent defect affecting the condition or value of the property, but not the title, the general rule is that the court will refuse specific performance if the vendor was aware of it at the date of the contract and did not disclose it, but not otherwise: *Debenham* v. *Sawbridge* [1901], 2 Ch. 98; 70 L. J. Ch. 525. This rule was applied to a case where both parties were unaware at the time, but discovered afterwards, that the neighbouring houses were used for immoral purposes, but not to a case where the property itself was used by the tenant for such purposes, on the ground that the purchaser would, if he completed, be exposed to criminal proceedings under the Criminal Law Amendment Act, 1885.(*d*)

Right of purchaser to relief may be rebutted by proof of knowledge.

The right of the purchaser to relief for a misdescription may be rebutted by showing that he was aware of the actual state of the property at the time of the purchase.(*e*) But such knowledge must be proved, and will not be presumed from circumstances which render it probable that he possessed it. Thus it has been held that a purchaser cannot be presumed to know the measurements of a piece of land because it has been in his occupation (*King* v. *Wilson* (1843), 6 Beav. 124); or to know of easements affecting it because he lived in the neighbourhood: *Shackleton* v. *Sutcliffe* (1847), 1 De G. & S. 609.

As to errors discovered after completion.

In the absence of any condition on the subject, a purchaser is not entitled to relief for a defect of title discovered after completion of the purchase, except so far as it is covered by the covenants for title: *Debenham* v. *Sawbridge* [1901], 2 Ch. 98, 108; 70 L. J. Ch. 525. A condition allowing compensation for errors of description extends to errors discovered after completion, unless expressly limited to those discovered before: *Palmer* v. *Johnson* (1884), 13 Q. B. D. 351; 53 L. J. Q. B. 348. Breach

(*c*) See *Yandle* v. *Sutton* [1922], 2 Ch. 199; 91 L. J. Ch. 567; *Simpson* v. *Gilley*, 92 L. J. Ch. 194.

(*d*) *Lucas* v. *James* (1849), 7 Hare, 410; 18 L. J. Ch. 329; *Hope* v. *Walter* [1900], 1 Ch. 257; 69 L. J. Ch. 166.

(*e*) *Dyer* v. *Hargrave* (1805), 10 Ves. 505; *Farebrother* v. *Gibson* (1857), 1 De G. & J. 602. See *Cato* v. *Thompson* (1882), 9 Q. B. D. 616.

of a collateral warranty, *e.g.*, as to drains, may also give rise to an action for damages even after conveyance.(*f*) And a purchaser of a house in course of erection may after completion sue on a contract to supply fixtures and complete the house: *Saunders* v. *Cockrill* [1902], 87 L. T. 30.

Condition negativing right to compensation.

Of late years a condition to the effect that the description shall be taken as correct, and that an error of description shall neither annul the sale nor give a right to compensation, has come into common use, particularly on sales of small properties. Such a condition applies only to physical errors, *i.e.*, errors in the description of the material thing which is the subject of sale, and not to errors which could not have been discovered by an inspection of the property.(*g*) It has also been held that, in the event of a serious deficiency in quantity, this condition, while it prevents the purchaser from insisting on specific performance with compensation, does not enable the vendor to enforce specific performance without it: *Jacobs* v. *Revell* [1900], 2 Ch. 858; 69 L. J. Ch. 879.

Applies only to physical errors.

Cannot be relied on where mistake is serious.

Whether vendor can claim compensation for mistake.

A misdescription is generally one which makes the property appear more valuable than it really is. But it may happen that a mistake is made to the prejudice of the vendor. Suppose, for example, that the acreage is largely understated, or that the property is described as subject to some obligation materially diminishing its value, which does not in fact exist. If, in a case of this kind, the misdescription is the result of a mistake in good faith, made under such circumstances as to be excusable, and it appears that the contract has been entered into by both parties and the price fixed on the basis of the incorrect statement, equity would not enforce specific performance against the vendor except on the terms of the purchaser paying an increased purchase-money. This would, *a fortiori*, be so if there is a condition providing that compensation for misdescription shall be paid to as well as by the vendor.(*h*)

Relief, where purchaser misled by ambiguity in particulars.

If the particulars are ambiguous, so that a purchaser may not unreasonably have been led into a mistake as to the character

(*f*) *De Lassalle* v. *Guildford* [1901], 2 K. B. 215; 70 L. J. K. B. 533. But see *Greswolde-Williams* v. *Barneby* [1900], 83 L. T. 708; and as to what constitutes a warranty, see *Heilbut Symons & Co.* v. *Buckleton* [1913], A. C. 30; 82 L. J. K. B. 245.

(*g*) *Re Beyfus and Master* (1888), 39 Ch. D. 110; *Re Plunkett and Smith* [1902], 2 Ch. 258; 71 L. J. Ch. 666; *Simpson* v. *Gilley*, 92 L. J. Ch. 194.

(*h*) *Leslie* v. *Tompson* (1851), 9 Hare, 268; 20 L. J. Ch. 561; *Calverley* v. *Williams* (1790), 1 Ves. Jun. 210; *Baxendale* v. *Seale* (1855), 19 Beav. 601; 24 L. J. Ch. 385; *Price* v. *North* (1837), 2 Yo. & Coll. Ex. 620; 7 L. J. Ex. Eq. 9.

of the property, and he shows by parol evidence that he did in fact make such mistake, specific performance will not be enforced against him.(*i*) But if the particulars are plain, a purchaser cannot resist specific performance on the ground that he has misunderstood them, such misunderstanding being due only to his own carelessness.(*j*)

Verbal statement of auctioneer not admissible to vary particulars, except as a defence to action.

A verbal statement by the auctioneer at the time of sale is not admissible as evidence on the part of the plaintiff to vary or explain the particulars (*Higginson* v. *Clowes* (1808), 15 Ves. 516) ; but may sometimes be pleaded as a defence to an action for specific performance. Thus, in a case where the auctioneer verbally corrected a serious misdescription, it was held that the purchaser could not enforce specific performance with compensation for the misdescription, even if he did not hear the statement : *Re Hare and O'More* [1901] 1 Ch. 93 ; 70 L. J. Ch. 45.

As to land in Middlesex or Yorkshire.

Condition where documents not registered in county register.

If the land, the title to which is not registered under the L. R. Act, 1925, is situated in Middlesex or in Yorkshire, the vendor should ascertain before he puts up the property for sale that all documents affecting it which ought to be registered have been duly registered under the Local Registry Acts. If any have not been so registered, a condition precluding objection on that account should be inserted, but if the sale is made in right of a " puisne " mortgage the condition should not extend to such a mortgage.

What has or has not to be registered.

Deeds of arrangement, land charges included in Class A of s. 10, of the L. C. Act, 1925, and in Class B, C, or D of that Act (except a puisne mortgage), or any instrument which is capable of registration under that Act, or any Act replaced by that Act, need not (see s. 18) be registered under the Middlesex Registry Act, 1708. Only instruments operating to create or transfer a legal estate need be registered in any local registry (L .P. Act, 1925, s. 11) ; but probates and letters of administration are treated as instruments capable of transferring a legal estate : *ib.* Registration in any local deeds registry of a memorial

(*i*) *Manser* v. *Back* (1848), 6 Hare, 443 ; *Torrance* v. *Bolton* (1872), 8 Ch. 118 ; 42 L. J. Ch. 177 ; and see *Blaiberg* v. *Keeves* [1906], 2 Ch. 175 ; 75 L. J. Ch. 464.

(*j*) *Tamplin* v. *James* (1880), 15 Ch. D. 215 ; *Van Praagh* v. *Everidge* [1902], 2 Ch. 266 ; 71 L. J. Ch. 598 ; reversed on another point [1903], 1 Ch. 434 ; 72 L. J. Ch. 260.

of any instrument conferring or transferring a legal estate in, or charge by way of legal mortgage on land within the jurisdiction of the registry constitutes actual notice of the grant or transfer of such legal estate or charge, to all persons and for all purposes from the date of registration or other prescribed date so long as the registration continues in force; but the registration of any instrument not required to be registered gives no notice either of the instrument or of its contents: L. P. Act, 1925, s. 197.

Notice.

Notwithstanding these provisions respecting notice attributable to registration, a mortgagee making a further advance, under a mortgage made expressly for securing further advances, is not affected with notice of any subsequent mortgage merely because it has been entered on the register, unless it was so entered before the original advance was made or when the mortgagee making the further advance, last searched, whichever last happened: L. P. Act, 1925, s. 94 (2).

Further advances.

As to time for Delivery of Abstract and for sending in Requisitions, and condition enabling Vendor to rescind on account of Objections taken.

A condition fixing the time within which an abstract should be delivered to the purchaser is inconvenient to the vendor, for if not complied with the purchaser is, subject to an express stipulation to the contrary, freed from restriction as to time in other matters, hence (except where the sale is made under the court, in which case it is required by the Rules of the Supreme Court: R. S. C., O. 51, r. 2); it is either omitted, or if used it is expressly provided that requisitions shall be delivered within a fixed time after the actual delivery of the abstract. If no time is fixed, the purchaser may serve a notice on the vendor fixing a reasonable time for the delivery of a proper abstract. If such notice is not complied with he may rescind the contract. and recover his deposit with interest; also, where an imperfect abstract has been delivered, the costs incurred by him in investigating the title as shown by such imperfect abstract.(*k*)

Time within which abstract should be delivered.

Generally a purchaser is required to make his requisitions and objections within a given time, with power for the vendor to annul the sale if requisitions or objections are insisted on which he is unable or unwilling to remove or comply with. As to

Condition requiring objections to be made within a given time.

(*k*) *Compton* v. *Bagley* [1892], 1 Ch. 313; 61 L. J. Ch. 113; as to stipulations as to time which are not of the essence of the contract, see L. P. Act, 1925, s. 41.

contracts by correspondence, see the conditions prescribed by the Lord Chancellor under L. P. Act, 1925, s. 46.

When taking Possession is a waiver of Objections to the Title.

Taking possession, when an acceptance of title.

The taking of possession by the purchaser is an equivocal act, it does not of itself amount to an acceptance of the title. In every case it is a question, depending upon the circumstances, whether the conduct of the purchaser is inconsistent with an intention to call for the title, or to insist on objections to it.(*l*) In *Fleetwood* v. *Green* (1809), 15 Ves. 594, specific performance was decreed against a purchaser who had remained in possession for a considerable time after the delivery of an abstract without making any objection; and in *Burnell* v. *Brown* (1820), 1 Jac. & W. 168, a purchaser was held to have waived any objection on the ground of the property being subject to a right of sporting, by taking possession with knowledge of the existence of such right.

If a contract contains no stipulation that possession may be taken before completion, and the purchaser takes possession, knowing that there are defects of title which are irremoveable, the taking of possession is a waiver; but not so if the defects are removeable: *Re Gloag and Miller* (1883), 23 Ch. D. 320; 52 L. J. Ch. 654.

As to the Time for Completing the Purchase.

Day for completing the purchase.

The contract should name the day on which the purchase is to be completed.

When time is of the essence of the contract.

The time fixed for completion is held to be of the essence of the contract only in cases of express stipulation or necessary implication: *Parkin* v. *Thorold* (1852), 16 Beav. 59; 22 L. J. Ch. 170; this rule is the same in law and in equity: L. P. Act, 1925, s. 41. If the property is of a wasting or precarious nature, or is required for immediate occupation or use, there would be grounds for such an implication.(*m*) On the other hand, a stipulation for payment of interest by the purchaser, if the contract is not completed on the day fixed, would raise a contrary inference.(*n*) Before 1875 equity, where it could do so, without injustice to the

(*l*) *Simpson* v. *Sadd* (1854), 4 D. M. & G. 665; 24 L. J. Ch. 562. See Dart, 7th ed., 512-514; *Allen* v. *I. R. C.* [1914], 2 K. B. 327; 83 L. J. K. B. 649.

(*m*) *Hudson* v. *Temple* (1860), 29 Beav. 536; 30 L. J. Ch. 251; *Tilley* v. *Thomas* (1867), L. R. 3 Ch. 61.

(*n*) *Webb* v. *Hughes* (1870), 10 Eq. 281; 39 L. J. Ch. 606; *Hatten* v. *Russell* (1888), 38 Ch. D. 334; 57 L. J. Ch. 425.

contracting parties, decreed specific performance notwithstanding failure to observe the time fixed for completion, and relieved the defaulter by restraining proceedings at law based on the default, unless the defaulter was a vendor who had put it out of his power to complete the contract; in that case there was no equity to restrain the proceedings against the vendor. It appears that this position is not affected by L. P. Act, 1925, s. 41 (replacing Jud. Act, 1873, s. 25 (7)).(*o*) Since the equitable rule is now the same in law as in equity it is conceived that legal relief as by the return of any deposit can now be granted whenever equitable relief is granted, see *ib.*, s. 149 (2).

Either party may, if the other is guilty of delay, fix a time for completion by reasonable notice.

Where time is not originally of the essence of the contract, if either party is guilty of unnecessary delay, the other party may give him a written notice, limiting a reasonable time within which the thing required to be done must be done, and stating that, in case of default, the contract will be treated as at an end; in determining the reasonableness of the time so limited, the court will consider not only what remains to be done at the date of the notice but all the circumstances of the case, including the previous delay of the vendor and the attitude of the purchaser in relation thereto.(*p*) If no time is fixed for completion, a reasonable time is implied.(*q*)

If vendor has a bad title, purchaser need not give him time to acquire a good one.

It is assumed in the preceding paragraph that the thing required to be done is something within the power of the party to do, *e.g.*, the obtaining of some obtainable evidence, or the procuring of some person to concur in the conveyance whose concurrence the vendor is entitled to insist on: *Hatten* v. *Russell* (1888), 38 Ch. D. 334; 57 L. J. Ch. 425. If the vendor can neither convey nor compel a conveyance from other parties, the purchaser may at once repudiate the contract, without waiting to see if the vendor can procure some third party to join,(*r*) but the repudiation must be clear and definite: *Re Hailes and Hutchinson* [1920], 1 Ch. 233; 89 L. J. Ch. 130. The vendor cannot compel the purchaser to accept the conveyance from a

(*o*) Per Lord Parker in *Stickney* v. *Keeble* [1915], A. C. 386; 84 L. J. Ch. 259.

(*p*) *Green* v. *Sevin* (1880), 13 Ch. D. 589; 49 L. J. Ch. 166; see *Brickles* v. *Snell* [1916], 2 A. C. 599; 86 L. J. P. C. 22; *Stickney* v. *Keeble* [1915], A. C. 386; 84 L. J. Ch. 259.

(*q*) *Simpson* v. *Hughes* [1897], 66 L. J. Ch. 334; 76 L. T. 237; *Nosotti* v. *Auerbach* [1898], 79 L. T. 413.

(*r*) *Bellamy* v. *Debenham* [1891], 1 Ch. 412; 60 L. J. Ch. 166; *Re Cooke and Holland* [1898], 78 L. T. 106; *Maconchy* v. *Clayton* [1898], 1 I. R. 291; *Re Bayley and Shoesmith*, 87 L. J. Ch. 626.

third party instead of himself,(*s*) unless he is merely selling as agent, or to accept a title subject to an outstanding legal estate, or to get in any such estate at the expense of the purchaser: L. P. Act, 1925, s. 42 (3).

Vendor may cure a defect of title at any time before contract is repudiated on that account.

A vendor having a bad title at the date of the contract may cure the defect at any time before the day fixed for completion, or even afterwards, provided that the purchaser has not in the meantime repudiated the contract on that account.(*t*)

Damages for vendor's delay.

Damages have been allowed to a purchaser for delay in completion occasioned by the default of the vendor in not using reasonable diligence to perform the contract: *Jones* v. *Gardiner* [1902], 1 Ch. 191; 71 L. J. Ch. 93.

As to Interest on the Purchase-money.

Rule as to interest in the absence of stipulation.(*u*)

In the absence of express stipulation, the purchaser is liable to pay interest on the purchase-money from the day fixed for completion, and is entitled from the same time to receive the rent. If, however, the purchase is not completed on that day, owing to the vendor's fault or inability to make a good title, the purchaser will be bound to pay interest only from the time when a good title was first made,(*v*) unless in the meantime he has entered into possession or receipt of the rents and profits: *Fludyer* v. *Cocker* (1806), 12 Ves. 25. Or exercised acts of ownership: *Ballard* v. *Shutt* (1880), 15 Ch. D. 122; 49 L. J. Ch. 618. In which case interest will run from the date of his so doing. Even if he takes possession he may free himself from the payment of interest by placing the money to a separate account and giving notice that it is lying idle: *Kershaw* v. *K.* (1869), 9 Eq. 56. The rate of interest used to be 4 per cent.,(*w*) and this rate, as regards debts, has not been altered.(*x*) But see now form prescribed under L. P. Act, 1925, s. 46, applicable to contracts

(*s*) *Re Bryant and Barningham* (1890), 44 Ch. D. 218, 223; 59 L. J. Ch. 636; Dart, 7th ed., 1066.

(*t*) *Hoggart* v. *Scott* (1830), 1 Russ. & M. 293. See also Dart, 7th ed., 1065, 1066; and see *Re Atkinson and Horsell* [1912], 2 Ch. 1; 81 L. J. Ch. 588; *Re Hailes and Hutchinson* [1920], 1 Ch. 233; 89 L. J. Ch. 130.

(*u*) See *Keeble* v. *Stillwell* [1898], 78 L. T. 383.

(*v*) *Esdaile* v. *Stephenson* (1822), 1 Sim. & St. 122; *Jones* v. *Mudd* (1827), 4 Russ. 118; 6 L. J. (O. S.) Ch. 26.

(*w*) *Wallis* v. *Sarel* (1852), 5 De G. & S. 429; 21 L. J. Ch. 717; Sug., 14th ed. 643.

(*x*) *Re Whiteford* [1903], 1 Ch. 889, 896; 72 L. J. Ch. 540; see *Re Davy* [1908], 1 Ch. 61; 77 L. J. Ch. 67.

by correspondence, under which the rate will be 5 per cent. unless the contract otherwise provides.

Where usual condition as to payment of interest.

It is usual, however, to insert an express condition making the purchaser liable to the payment of interest if "from any cause whatever," *or* if "from any cause other than the wilful default of the vendor," the purchase is not completed on the day fixed.

Stipulations which are Void in favour of Purchasers.

Stipulation as to concurrence of third persons void.

Where the vendor can make title under a trust for sale under the provisions of the L. P. Act, 1925, or the S. L. Act, 1925, or where the vendor is a mortgagee and can convey the estate or interest of the mortgagor free from redemption, any stipulation that a purchaser shall accept a title made with the concurrence of a third person whose interest can be overreached is void: L. P. Act, 1925, s. 42 (1).

Stipulation as to costs incidental to making title void.

A stipulation that a purchaser of a legal estate in land shall pay any of the costs incidental to :—

(a) obtaining a vesting order, or the appointment of trustees of a settlement, or a conveyance on trust for sale;

(b) the preparation, stamping, or execution of a conveyance on trust for sale, or of a vesting instrument under the S. L. Act, 1925, is void: L. P. Act, 1925, s. 42 (2).

A vendor is bound to get in all outstanding legal estates.

A vendor is bound to trace and get in all outstanding legal estates before completion and any stipulation that an outstanding legal estate shall be traced or got in at the expense of the purchaser, or that no objection is to be taken on account of such an estate, is void: L. P. Act, 1925, s. 42 (3).

Construction of Contracts.

Contracts for sale of limited estates may give a right to a conveyance of larger estates if vendor can convey them.

If the subject of a contract for the sale, or exchange, of land is :

(1) a mortgage term and the vendor has power to convey the fee simple or the leasehold reversion affected thereby, the contract extends to the fee simple or the leasehold reversion; but where a mortgagee is unable to convey to or vest in the purchaser the leasehold reversion expectant on his term, such a contract is confined to the mortgage term: L. P. Act, 1925, s. 42 (4) (i), (5).

(2) an equitable interest capable of subsisting as a legal estate, and the vendor has power to vest such estate in himself, or in the purchaser, or to require the same to be so vested, the contract extends to that legal estate: L. P. Act, 1925, s. 42 (4) (ii).

(3) an entailed interest in possession and the vendor has power to vest in himself or in the purchaser the fee simple, or to require the same to be so vested, or if the entailed interest is an interest in a term of years absolute, the contract extends to the fee simple or term of years absolute.

Contracts to convey an undivided share in land.

As undivided shares in a legal estate in land have been abolished (L. P. Act, 1925, s. 1 (6)) a contract to convey such an estate, whenever made, will be sufficiently complied with by a conveyance of a corresponding share in the proceeds of sale of that land : L. P. Act, 1925, s. 42 (6).

On a compulsory purchase, title will be made without payment of compensation money into court.

A purchaser, who has power to acquire land compulsorily, and can obtain a good title without paying the compensation money into court, shall accept title made in that way, unless to avoid expense or delay or for some special reason he considers it expedient that the money should be paid into court : L. P. Act, 1925, s. 42 (7).

When vendor cannot rescind.

A vendor has no power to rescind a contract on the ground of the enforcement of any right under L. P. Act, 1925, s. 42. See sub-s. 8.

Stipulation as to employment of solicitors.

Stipulations preventing a purchaser, lessee, or underlessee from employing his own solicitor are void : L. P. Act, 1925, s. 48.

As to Title Deeds.

Deeds to be delivered to purchaser unless they relate to other land of vendor.

All the deeds in the vendor's possession or power relating to the land sold, and not to other land retained by him, must be delivered to the purchaser on the completion of the purchase, however ancient such deeds may be.(*y*) If the deeds relate to other land of the vendor, however small in value, or to the extinguishment of rights over such land (*Re Lehmann and Walker* [1906], 2 Ch. 640; 75 L. J. Ch. 768), or to a trust which is still subsisting, he is entitled by virtue of the L. P. Act, 1925, s. 45 (9), to retain them ; but this enactment applies only to land, so that if a deed relates to the land sold and also to personal property, *e.g.*, a policy of assurance which is retained by the vendor, the deed must be given up to the purchaser : *Re Williams and Duchess of Newcastle* [1897], 2 Ch. 144 ; 66 L. J. Ch. 543. If, under the old practice, a vendor had, on a previous sale of part of the property, given to a former purchaser a covenant for production, under which he would have remained personally

Vendor who has given a covenant for production to former purchaser entitled to indemnity.

(*y*) *Parr* v. *Lovegrove* (1857), 4 Drew. 170, 182, n ; *Re Duthy and Jesson* [1898], 1 Ch. 419 ; 67 L. J. Ch. 218.

liable after he had handed over the deeds, he could not on that account have retained them as against the subsequent purchaser, but he might perhaps have required a covenant from the latter to perform the covenant or indemnify him against future liability thereunder.(*z*)

Vendor retaining deeds must give acknowledgment, and, unless a trustee, an undertaking for safe custody.

A vendor retaining deeds is bound to give to the purchaser a statutory acknowledgment of his right to the production and delivery of copies of them, and also (if he is a beneficial owner) an undertaking for their safe custody (L. P. Act, 1925, s. 64); this undertaking will satisfy any liability to give a covenant for safe custody: sub-s. 11. The acknowledgment and undertaking are binding on the vendor personally so long only as the deeds are in his possession or control: *ib.*, sub-s. 2. If the vendor is a trustee or mortgagee, it is the usual practice, though not, it seems, necessary, to stipulate that he shall give the acknowledgment, but not the undertaking. As regards documents not in the vendor's possession, and not being instruments of record (see *Halkett* v. *Earl Dudley* [1907], 1 Ch. 590; 76 L. J. Ch. 330), the purchaser should see whether they are the subject of any existing covenant for production or statutory acknowledgment, the benefit of which will pass to him on completion. If they are not, he is entitled to require the vendor to procure such a covenant or acknowledgment from the person who holds them. If the vendor cannot do so, his inability will be an objection to the title, unless the circumstances are such that the purchaser will on completion have a right in equity to their production.(*a*)

Inability of vendor to obtain acknowledgment from third parties when an objection to title.

Unless purchaser has right in equity to production.

Practice when property sold in lots.

If the whole of an estate held under one title is sold in lots, the practice, in the absence of special stipulation, is for the purchaser of the largest portion in value to have the custody; but if any lot is not sold, the vendor may retain the deeds.

(*z*) Sug., 14th ed., 435.

(*a*) L. P. Act, 1925, s. 45 (7). It is sometimes difficult to say whether there is an equitable right to the production of deeds (see Dart, 7th ed., 783, 784). In *Barclay* v. *Raine* (1823), 1 Sim. & St. 449, it was contended that where A. is in possession of deeds relating to his own lands as well as to lands of B. B.; although he has no covenant for production, has a general right in equity to require A. to produce them; however, this equity was treated by Leach, V.-C., as doubtful. But in *Fain* v. *Ayers* (1826), 2 Sim. & St. 533; 4 L. J. (O. S.) Ch. 166, where on a sale and conveyance of land the vendor had given no covenant for production, the same judge was strongly inclined to think that the purchaser had an equity to require the production. See also 3rd Report of R. P. Commrs.; also *Re Jenkins and Commercial Electric Theatre Company* [1917], W. N. 49; Elphinstone's Intro. to Conveyancing, 7th ed., p. 143, *et seq.*

In what cases equitable right to production exists.

Purchaser must pay for attested copies.

A purchaser is entitled, at his own expense, to have attested copies of documents not delivered to him, and office copies of such as are instruments of record : L. P. Act, 1925, s. 45 (4).

SEC. IV.—*Remedies for obtaining performance of a contract, or relief for its breach, and other incidents of a contract.*

Vendor or purchaser can obtain opinion of judge in chambers.

A vendor or purchaser of real or leasehold property, or their representatives respectively, may at any time, under s. 49 of the L. P. Act, 1925, apply in a summary way to a judge in chambers, in respect of any requisitions or objections, or claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the validity of the contract such as a claim for the return of a deposit on account of misdescription),(*b*) and obtain the decision of the judge thereon. Where specific performance is refused, or proceedings are taken for the return of the deposit, the court may, in this action, order the repayment of any deposit : L. P. Act, 1925, s. 49 (2). An action for specific performance is not within sub-s. 1. A summons under the L. P. Act, 1925, s. 49, is intended for the determination of distinct isolated points arising under a contract, not the general question as to the soundness of the vendor's title.(*c*) Though evidence be adduced tending to throw a doubt on the validity of the contract, the court will decide on the summons a specific question under the contract as it stands : *Re Hughes and Ashley* [1900], 1 Ch. 595 ; 69 L. J. Ch. 741.

What questions can be so decided.

The judge has power to determine the validity of a notice to rescind the contract for sale (*Re Jackson and Woodburn* (1887), 37 Ch. D. 44 ; 57 L. J. Ch. 243), or, on declaring that a good title cannot be made to decide that the deposit is to be repaid with interest and that the vendor or purchaser, as the case may be, shall pay the costs of investigating the title, or that any other things shall be done which are the natural consequence of the decision ;(*d*) but he has no jurisdiction under this section to decide any point that does not concern the purchaser : *Re Tippett and Newbould* (1888), 37 Ch. D. 444.

(*b*) *Re Davis and Cavey* (1888), 40 Ch. D. 601 ; 58 L. J. Ch. 143. *Cf. Re Haedicke and Lipski* [1901], 2 Ch. 666.

(*c*) *Re Wallis and Barnard* [1899], 2 Ch. 515 ; 68 L. J. Ch. 753 ; *Re Hogan and Marnell* [1919], 1 I. R. 422.

(*d*) *Re Hargreaves and Thompson* (1886), 32 Ch. D. 454 ; 56 L. J. Ch. 199 ; *Re Ebsworth and Tidy* (1889), 42 Ch. D. 23, 53 ; 58 L. J. Ch. 665 ; *Re Arbib and Class* [1891], 1 Ch. 601 ; 60 L. J. Ch. 263 : *Re Walker and Oakshott* [1901], 2 Ch. 383 ; 70 L. J. Ch. 666.

Form of conveyance.

The judge may decide questions arising on the form of the conveyance: Dart, 7th ed., 586; *Re Cooper and Crondace* [1904], 90 L. T. 258.

Doubtful title not forced on purchaser.

The court will decide for or against a doubtful title, but will not compel a purchaser to take one: *Pyrke* v. *Waddingham* (1852), 10 Hare, 1.

As to what is a Doubtful Title.

Doubtful titles.

(1) Where the title depends on the construction of a general Act of Parliament or some general principle of law, the court ought to decide the point and enforce its decision against the purchaser, even though a court of inferior jurisdiction may have decided the same point otherwise.(*e*) But the court ought to feel such confidence in the soundness of its own opinion as to be satisfied that no other court of equal jurisdiction could reasonably arrive at a different conclusion.(*f*)

(2) The title will not be forced on a purchaser if he would after completion be probably exposed to litigation at the suit of a third party, with doubtful result: *Re Marshall and Salt* [1900], 2 Ch. 202; 69 L. J. Ch. 542.

(3) A title will not be enforced where its validity depends on facts the accuracy of which the court has not at the time sufficient means of judging, or where the evidence available is liable to be displaced or affected by evidence not known to the court.(*g*)

(4) A possessory title depending on an assignment which is void under the Landlord and Tenant Act, 1860, is not such as will be forced on a purchaser: *Ashe* v. *Hogan* [1920], 1 I. R. 159.

Remedies.

Action for specific performance.

Where the question between the parties is one which affects the validity of the contract, or for any other reason cannot be decided on a vendor and purchaser's summons, the remedy of the party aggrieved is by an action for specific performance or by an action claiming damages for the breach.(*h*)

Measure of damages on breach of contract for sale.

The general rule of law that where a person makes a contract and breaks it he must pay the whole damage sustained in

(*e*) *Alexander* v. *Mills* (1870), 6 Ch. 124; 40 L. J. Ch. 73; *Smith* v. *Colbourne* [1914], 2 Ch. 533; 84 L. J. Ch. 122.

(*f*) *Palmer* v. *Locke* (1881), 18 Ch. D. 381; 51 L. J. Ch. 124; *Re Hollis' Hospital and Hague* [1899], 2 Ch. 540; 68 L. J. Ch. 673.

(*g*) *Re Handman and Wilcox* [1902], 1 Ch. 599; 71 L. J. Ch. 263; *Re Douglas and Powell* [1902], 2 Ch. 296; 71 L. J. Ch. 850.

(*h*) See *Banfield* v. *Picard* [1911], 55 Sol. J. 649, as to costs in such an action.

consequence does not apply to contracts for the sale of real estate, in respect of which a special rule has been established, viz., that on a breach of a contract of this nature arising from want of title, the purchaser can only recover by way of damages the expense of investigating the title, and is not entitled to compensation for the loss of the bargain.(*i*) This is so, though the vendor may be aware of his want of title, when he enters into the contract.(*j*) But the special rule does not apply where the vendor has the means of making a good title, but declines to take the necessary steps to do so.(*k*) After 1925 a vendor will seldom be able to evade his responsibilities: L. P. Act, 1925, s. 42.

Where the property was subject to a mortgage, and the vendor could neither redeem the mortgage nor obtain the concurrence of the mortgagees in the conveyance, the purchaser was entitled to damages for loss of bargain. In such a case the absence of wilful default and bad faith is immaterial.(*l*)

Conditions generally inserted in contracts to protect vendor against liability if unable to make title.

It is usual for the vendor to protect himself against liability to pay interest or costs in case of his not being able to make a title, by a condition enabling him to rescind in that event, but the conditions will not be available in cases within L. P. Act, 1925, s. 42.

On a sale by auction, a vendor nearly always and in a private sale, generally reserves to himself a power to re-sell the property in case of the purchaser's default, to charge the latter with the deficiency in price, if any, beyond the deposit, and to forfeit the latter, but after 1925 the court has power in all cases to order the repayment of the deposit.

Objects of deposit.

Where a contract is rescinded owing to the default of the purchaser, in the absence of express stipulation the vendor has, unless the court orders repayment, the right to forfeit the deposit as such deposit is regarded as an earnest that the

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(*i*) *Flureau* v. *Thornhill* (1776), 2 Wm. Bl. 1078; *Keen* v. *Mear* [1920], 2 Ch. 574; 89 L. J. Ch. 513.

(*j*) *Bain* v. *Fothergill* (1874), 7 H. L. 158; 43 L. J. Ex. 243. In a sale by the court the purchaser may also recover other expenses besides those of investigating title: *Holliwell* v. *Seacombe* [1906,] 1 Ch. 426; 75 L. J. Ch. 289.

(*k*) *Engel* v. *Fitch* (1869), 4 Q. B. 659; 38 L. J. Q. B. 304; *Day* v. *Singleton* [1899], 2 Ch. 320; 68 L. J. Ch. 593; *Jones* v. *Gardiner* [1902], 1 Ch. 191; 71 L. J. Ch. 93; see *Pease* v. *Courtney* [1904], 2 Ch. 503; 73 L. J. Ch. 760.

(*l*) *Re Daniel* [1917], 2 Ch. 405; 87 L. J. Ch. 69; *Braybrooks* v. *Whaley* [1919], 1 K.B. 435; 88 L. J. K. B. 577.

purchaser will complete the sale, and not only as payment of part of the purchase price.(*m*)

A purchaser who repudiates a contract on the ground that it does not comply with L. P. Act, 1925, s. 40 (no memorandum in writing) is not entitled to the return of the deposit: *Monnickendam* v. *Leanse* [1923], 39 T. L. R. 445.

Other Incidents of a Contract.

Equitable conversion.

From the date of a valid contract for sale the vendor, is, to some extent, a trustee of the land for the purchaser, subject to the right of the vendor to retain the land to protect his own interest under the contract pending completion.(*n*) But after 1925 the question of conversion of real estate into personal estate or *vice versa* is of less importance, having regard to the provisions governing the devolution of intestates' estates in Ad. of E. Act, 1925.

Sale of business.

Where, by reason of the wilful default of the purchaser, a sale of the goodwill of a business with the business premises is not completed on the day fixed, the vendor may carry on the business at the purchaser's risk and is entitled to be indemnified for any loss incurred, provided he gives to the purchaser notice that he is carrying on the business at a loss: *Golden Bread Co.* v. *Hemmings* [1922], 1 Ch. 162; 91 L. J. Ch. 228

Loss happening after contract falls on purchaser and benefit accruing after contract belongs to him.

It follows that any loss or deterioration arising to the property after the contract and before the conveyance falls upon the purchaser. Thus, where freehold houses contracted to be sold were afterwards burnt down, the contract was enforced against the purchaser, although the vendor, since the contract, had allowed the insurance to expire without giving him notice; (*o*) and for the same reason, on the purchase of a life annuity, the purchaser must bear the loss arising from the death of the *cestui que vie* before the conveyance: *Kenney* v. *Wexham* (1822), 6 Madd. 355. On the other hand, the purchaser is entitled to any benefit which may accrue to the property from circumstances happening between the contract and conveyance, as by the dropping of lives on the purchase of a reversionary interest, or by an increase or improvement in the value of the land: *Harford*

(*m*) *Hall* v. *Burnell* [1911], 2 Ch. 551; 81 L. J. Ch. 46; *Chillingworth* v. *Esche* [1924], 1 Ch. 97; 93 L. J. Ch. 129; see also *Mayson* v. *Clouet* [1924], A. C. 980; 93 L. J. P. C. 237.

(*n*) *Shaw* v. *Foster* (1872), 5 H. L. 321; 42 L. J. Ch. 49. See also Dart, 7th ed., 287.

(*o*) *Paine* v. *Meller* (1801), 6 Ves. 349. See also *Poole* v. *Shergold* (1786), 2 Bro. C. C. 118.

v. *Purrier* (1816), 1 Madd. 532, 539. Where he purchases in consideration of a life annuity to be paid to the vendor, the contract will be enforced against the latter, though the annuity drops by the death of the *cestui que vie* before the conveyance.(*p*)

Insurance money.

On completion, the application of fire insurance money received by the vendor is, subject to the express terms of the contract, governed by s. 47 of the L. P. Act, 1925. This section takes effect subject to the requisite consent of the insurers; it does not affect their right to subrogate, for in its essence a fire policy is a contract for indemnity, hence if the purchaser re-insures the vendor's office or underwriters will be entitled to contribution.

The old law.

Person entitled to insurance money in case of fire between contract and completion.

Where the contract was made before 1926, in the absence of stipulation, a contract for the sale of a freehold house which had been insured by the vendor, and which was damaged by fire between the date of the contract and the completion of the purchase, did not, independently of an express provision in the policy, pass to the purchaser the benefit of the insurance, and if the insurance money was paid to the vendor, he was bound to repay it to the insurance office out of the purchase-money.(*q*) But on the sale of a leasehold house where the lease contained a covenant to insure and rebuild, the purchaser indirectly got the benefit of the insurance.(*r*)

If a fire occurs after completion the vendor has no insurable interest, and nothing can be recovered under a policy,(*s*) unless the policy has been made over to the purchaser with the consent of the office.

A binding contract to convey a legal estate is enforceable by or against the personal representatives of the parties thereto.

By the combined effect of the L. P. Act, 1925, ss. 78-80, and the Ad. of E. Act, 1925, ss. 1-3 and 26, the burden and benefit of all covenants and agreements *relating to land*, including

(*p*) *Mortimer* v. *Capper* (1782), 1 Bro. C. C. 155; *Jackson* v. *Lever* (1792), 3 Bro. C. C. 604.

(*q*) *Rayner* v. *Preston* (1881), 18 Ch. D. 1; 50 L. J. Ch. 472; *Castellain* v. *Preston* (1883), 11 Q. B. D. 380; 52 L. J. Q. B. 366; *Phœnix Assce. Co.* v. *Spooner* [1905], 2 K. B. 753; 74 L. J. K. B. 792; Dart, 7th ed., 194. As to the rights of a tenant for life, see T. Act, 1925, s. 20, which to some extent modifies the law laid down in *Gaussen* v. *Whatman* [1905], 93 L. T. 101; *Re Quicke* [1908], 1 Ch. 887; 77 L. J. Ch. 523, and article thereon in 54 Sol. J. 357.

(*r*) And see Fires Prevention (Metropolis) Act, 1774, s. 83; which is of general as opposed to local application: *Sinnott* v. *Bowden* [1912], 2 Ch. 414; 81 L. J. Ch. 832; not following the *dicta* to the contrary of Lord Watson in *Westminster Fire Office* v. *Glasgow, &c., Socy.* (1888), 13 A. C. 699; see also 54 Sol. J. 357.

(*s*) *N. S. Wales Bank* v. *N. British, &c., Insce. Co.* (1882), 3 N. S. W. L. R. 60.

" estate contracts," are enforceable by or against the personal representatives, successors in title, or survivors, where two or more joint tenants have contracted to convey such an estate. An estate contract can be registered as a land charge (L. C. Act, 1925, s. 10 Class (iv)), or a purchaser will take free therefrom : *ib.*, ss. 13, 14; but it will seldom be necessary in practice to register a land charge in respect of an estate contract, unless the completion of the contract is to be delayed. Under the old law a purchaser of a legal estate without notice took free from a contract. The purchase-money is part of the vendor's personal estate, and the rents and profits of the land up to the day fixed for completion are part of his real estate : *Lumsden* v. *Fraser* (1841), 12 Sim. 263 ; 10 L. J. Ch. 362. On the death of the purchaser, the land and the rents and profits of it after the day fixed for completion are part of his real estate, and the land or other property affected by a vendor's lien is, under the Ad. of E. Act, 1925, s. 35, the primary fund for the payment of unpaid purchase-money.(*t*)

" Estate contracts."

Equitable conversion of purchase-money.

In view of Part IV of the Ad. of E. Act, 1925, see also s. 33 (trust for sale), which, with insignificant exceptions, makes the real and personal estate pass on an intestacy in the same way, the question of conversion before the death into realty or personalty will, save for the purposes of a Will, generally become immaterial.

Subject to the estate and powers of a personal representative, a general devise in equity passes land contracted to be purchased after the date of the Will, and a contract for the sale of land revokes a previous devise made by the vendor ;(*u*) the purchase-money passes under his Will as part of his personal estate.(*v*)

Effect of contract on devise.

A contract for sale is not avoided by the bankruptcy of either party. If the purchaser becomes bankrupt, his trustee may disclaim under the Bankrupcty Act, 1914, s. 54, and independently of disclaimer, specific performance will not be enforced against him.(*w*) If the vendor becomes bankrupt, his trustee is bound to complete, he cannot disclaim the contract unless the property is leasehold, in which case he must also disclaim the lease.(*x*)

Effect of bankruptcy.

(*t*) *Re Cockcroft* (1883), 24 Ch. D. 94 ; 52 L. J. Ch. 811 ; see *Re Fraser*, 1904, 1 Ch. 726 ; 73 L. J. Ch. 481.

(*u*) *Farrar* v. *Winterton* (1842), 5 Beav. 1 ; *Re London Bridge, &c., Act* (1843), 13 Sim. 569.

(*v*) 1 Jarm., 6th ed., 163 ; *Knollys* v. *Shepherd* (1819), cited 1 J. & W. 499.

(*w*) Dart, 7th ed., 1034.

(*x*) *Pearce* v. *Bastable's Trustee* [1901], 2 Ch. 122 ; 70 L. J. Ch. 446 ; see also Williams on Bankruptcy, 12th ed., 320-333 ; and as to registered land : L. R. Act, 1925, s. 42 (2).

CHAPTER V.

Preparation of Abstracts and Epitomes thereof.

Preparation of Abstracts.

Distinction between registered and unregistered land.

One of the main objects of registering a title to land is to avoid the repetition of examination of abstracts. The effect of the transaction is examined at the time of completion and is then noted in the register in order to keep a record of the title up to date.

Reduction of length and simplification of abstracts.

Where the title is not registered it is inevitable that, for the sake of security, past dealings should be investigated on behalf of an intending purchaser. All that is open to the reformer is to reduce, so far as compatible with safety, the items which have to be disclosed to a purchaser and to simplify and shorten the forms of instruments which have to be produced to his agents for examination.

The New Acts deal with the problem of reduction of items in two ways. First, the period of investigation is, in the case of freeholds and enfranchised land, reduced from forty to thirty years independently of express contract (L. P. Act, 1925, s. 44), a purchaser being rendered safe if he acts on this enactment: *ib.*, sub-s. 8. In the case of leaseholds the lease or underlease must be abstracted, but the title can be taken up again thirty years before the contract. And secondly, the class of documents with which a purchaser will be concerned is further restricted, where a legal estate, the ordinary subject matter of commerce, is to be transferred or created.

What should not be abstracted.

Thus, it is laid down in L. P. Act, 1925, s. 10, that it shall not be deemed necessary or proper to include in an abstract an instrument relating only to interests (not merely equitable interests for a legal mortgagee, for instance, when he sells can get in and defeat a legal estate vested in the mortgagor) or powers which will be overreached by the conveyance.

What will or will not be overreached has been explained in Chapter I (see the paragraphs relating to "overreaching provisions"), it is accordingly essential to bear these overreaching powers in mind when an abstract is being prepared.

The principle enacted in s. 10 is no new principle, it was in force under s. 20 of the S. L. Act, 1882; indeed, legal estates, such as terms of years absolute, can still be overreached under the S. L. Act, 1925 (see s. 1 (1) (v)) enabling a legal term, created even before the settlement, to be overreached unless it has been conveyed for raising money. It applied to interests in the proceeds of land held on trust for sale, whether or not the purchaser had notice, and to equities, such as mortgages by deposit and equitable interests affecting mortgage debts, of which the purchaser did not have notice.

It is true that if a solicitor includes some instrument in the abstract which need not appear, he will not be liable (L. P. Act, 1925, s. 10 (2)); but unless full advantage is taken of the statutory facilities for shortening abstracts it will afford an additional argument for those who support compulsory registration of title; for under that system equitable interests and powers are of necessity kept off the title.

The need for short abstracts.

With this in view it may become the practice for a short time, in complicated cases, to consult counsel as to the form an abstract should take, but even so, the work will have been done once and for all and his fees will probably be more than recovered by the saving in copying costs.

It is a mistake to suppose that all instruments and matters relating to the title before 1926 will have to be abstracted. Nearly all equitable interests and powers created before 1926 and some legal estates will be capable of being overreached, see the Epitomes of Abstracts, *infra*; it will, however, be material to show who the person was who took the legal estate (L. P. Act, 1925, 1st Sch., and S. L. Act, 1925, 2nd Sch.) on 1st January, 1926.

Effect on titles before 1926.

As time goes on the preparation of abstracts will become far easier than under the old system, particularly will this be so if the suggestion is adopted that documents be endorsed "legal estate" or "equitable interests."

The following are a few examples of the way in which documents relating to the legal estate are shortened and simplified. The main idea is (see the exceptions in L. P. Act, 1925, ss. 7–9) that abstracts should consist of simple transfers from A. to B. and from B. to C., being persons of full age, and so on, interspersed with probates, letters of administration, assents in writing, leases, vesting orders, vesting declarations, grants, and reservations of easements and rentcharges, held for legal estates, and

Simplification of instruments the aim of modern abstracts.

subject or not to restrictive covenants. Even in the excepted cases, legal estates will, when practicable, be transferred or created in the name of the estate owner: L. P. Act, 1925 ss. 7 (4), 8. This is why s. 74 (3) (4), relating to execution by attorneys, becomes of special importance.

Statutory power of attorney.

If it is borne in mind that an abstract relating to a legal estate will be very similar to what an abstract of the title to stock would be, if companies did not keep a register of stockholders and a purchaser were not concerned with the trusts declared by wills and settlements, no great difficulty should be experienced.

A purchaser will not be concerned with trusts affecting mortgage debts: *ib.*, s. 113.

Reduction of interests capable of subsisting as legal estates.

(1) Legal estates are reduced to two, a fee simple absolute in possession and a term of years absolute: see Chapter I. This not only increases the number of equitable interests capable of being overreached, but prevents a legal estate being split up into legal life estates, remainders and executory interests, thus simplifying dealings affecting a purchaser.

It is true that the former equitable estates of second and subsequent mortgagees are converted into legal terms, but, unless the mortgagee has the title deeds, he will have to register his mortgage either in a local deeds register or as a land charge in order to obtain the benefit attributable to the acquisition of a legal estate: see Chapter I. And, whether he registers a land charge or not, his legal estate will remain capable of being overreached by a prior mortgagee.

No undivided shares.

(2) No complicated dealings with undivided shares will appear. The purchaser will deal with trustees for sale holding the legal estate in the entirety: Chapter I. Having encountered undivided shares, instead of investigating the title to each of them, a purchaser will merely have to ascertain in whom the legal estate in the entirety has become vested.

Settlements swept off the title.

(3) Save in the case of settlements created before 1926 and certain freak settlements (and then only if a counsel's certificate is not obtained when the vesting instrument is executed and the General Conditions of 1925 are not used), settlements of land are swept off the title; the purchaser will deal with a tenant for life (who becomes the estate owner) and S. L. Act trustees certified by the "vesting instrument": see Chapter I. This instrument, whether taking the form of an assent or a conveyance, is, in effect, a simple transfer from A. to B.

(4) Conveyances can be shortened by omitting technical words, such as "heirs," "fee simple," "successors": L. P. Act, 1925, s. 60. Omission of technical words in conveyances.

(5) Besides covenants for title, the usual covenants for indemnity and remedies for breach of covenant are implied: L. P. Act, 1925, ss. 77, 190. Usual covenants, &c., implied in conveyances.

(6) A charge by way of legal mortgage supplies a short and effective form of mortgage: *ib.*, s. 87. Mortgages: short form.

(7) A short form of transfer of a mortgage is furnished: *ib.*, s. 114. Transfers: short form.

(8) A short form of surrender or reconveyance is effected by an endorsed receipt: *ib.*, s. 115. Mortgage terms cannot be kept alive when the mortgage is paid off otherwise than by a limited owner: *ib.*, s. 116. Reconveyances: short form.

(9) A married woman will not have to acknowledge deeds: *ib.*, s. 167. Married women.

(10) An appointment of new trustees of a conveyance on trust for sale will be kept distinct from the appointment of the same persons to be trustees of the settlement of the proceeds: T. Act, 1925, s. 35. Similarly, when new trustees of the trust instrument or settlement are appointed, there will be a separate deed for the purposes of the vesting instrument (relating to the legal estate) stating who are the S. L. Act trustees; this deed alone will be abstracted: S. L. Act, 1925, ss. 35, 110 (2) (*d*). Appointments of trustees of dispositions on trust for sale or of settlement.

The five following epitomes of abstracts taken from the 6th Sch. to the L. P. Act, 1925, should be carefully studied. The references and notes at the foot of each page have been inserted by the editors. Epitomes of abstracts in 6th Sch. of L. P. Act, 1925.

Epitomes of Abstracts.

Specimen No. 1.

Of the title of John Williams to Blackacre.

Where the Title commences before the 1st January, 1926.

The italics show how the abstract is to be framed and what documents are to be abstracted. After the commencement of this Act, the parts not in italics may be ignored.

Will of H. Jones, appointing Maria Jones and W. Jones executors and Settled Land Act trustees. 10th June 1897. (*a*)

(*a*) The limitations of this will, down to the life estate, are material: S. L. Act, 1925, ss. 9, 110 (2), proviso; unless counsel's certificate as to title given, pursuant to the General Conditions of 1925, when the vesting instrument is executed, is relied on. After the vesting instrument of 20th Jan., 1926.

Devises Blackacre.

To the use that Maria Jones may receive a yearly rentcharge of five hundred pounds for her life, and, subject thereto,

To the use of W. Jones for life with remainder,

To the use of X. and Y., for a term of one thousand years, and subject thereto,

To the use of the first and other sons of W. Jones in tail with remainders over.

Trusts of term of one thousand years declared for raising ten thousand pounds for portions for younger children of W. Jones, as he shall appoint, and in default equally.

Hotchpot clause. Power to appoint new trustees.

4th June 1898. *Death of H. Jones.*

1st August 1898. *Will of H. Jones proved.*

[NOTE.—After the execution of the vesting deed the will only takes effect in equity and can be withdrawn from the abstract when not required as a root of title.]

20th August 1899. *Conveyance by the executors to the uses of the Will.*

2nd September 1915. (*b*) *Appointment of R. and S. to be Settled Land Act trustees of the will in place of Maria Jones and W. Jones who retire.*

1st January 1926. The Settled Land and Law of Property Acts, 1925, come into operation.

[NOTE.—The legal estate in fee simple will vest in W. Jones in fee simple, but he cannot deal with it till the vesting deed is executed.(*c*)]

20th January 1926. *Deed by the Settled Land Act trustees declaring that the fee simple is vested in W. Jones on the trusts of the will and stating that they are the trustees of the settlement.*(*d*)

2nd February 1926. Appointment by W. Jones of five thousand pounds, part of the ten thousand pounds, to his daughter, Ann Jones.

3rd February 1926. Assignment by Ann Jones of her five thousand pounds, part of the ten thousand pounds raisable for portions, to trustees F. and G. on her marriage to J. Robinson.

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is executed, the portion term of 1,000 years becomes an equitable interest: *ib.*, 2nd Sch., para. 1 (6); the jointure becomes an equitable interest by virtue of L. P. Act, 1925, s. 1 (3), and 1st Sch., Pt. I.

(*b*) This appointment is material: S. L. Act, 1925, s. 110 (2), proviso.

(*c*) It vests under L. P. Act, 1925, 1st Sch., Pt. II; for the restriction on dealings, see S. L. Act, 1925, ss. 13 and 18.

(*d*) For a form see S. L. Act, 1925, 1st Sch., Form No. 1. After this vesting deed counsel's certificate of title should be abstracted if one has been obtained; if this certificate is given the prior equitable interests need not be investigated.

Will of W. Jones, appointing T. Brooks his executor.(*e*)	4th February 1926.
Death of W. Jones leaving three children, Frederick Jones, his eldest son, and E. Jones and Ann Robinson.	6th March 1926.
Disentail by Frederick Jones in trust for himself in fee simple.	2nd April 1926.
Will of W. Jones proved by R. and S. in regard to the settled land.	3rd May 1926.
Mortgage by E. Jones of his one-half of the ten thousand pounds to K.	6th June 1926.
Death of Maria Jones, jointress.	1st December 1926.
Release by F. and G. on payment to them of the five thousand pounds of Ann Robinson.	2nd January 1927.
Release by E. Jones and K., his mortgagee, of the five thousand pounds raisable for E. Jones.	Same date.
Assent by R. and S. as personal representatives to Frederick Jones in fee, without nominating Settled Land Act trustees.(*f*)	3rd January 1927.

[NOTE.—If the assent had been made before the family charges had been cleared, the personal representatives would have nominated themselves as being the trustees of the settlement, and a discharge from them would have been required when the charges were cleared.]

Mortgage either by charge by way of legal mortgage or for a term of one thousand years by Frederick Jones to the Estate Trustees of the C. Assurance Society to secure five thousand pounds and interest.(*g*)	6th February 1927.
Second mortgage either by charge by way of legal mortgage or for a term of two thousand years by Frederick Jones to D., to secure three thousand pounds and interest.	20th March 1927.
Third mortgage either by charge by way of legal mortgage or for a term of three thousand years by Frederick Jones to E., to secure two thousand pounds and interest.	1st June 1927.
Conveyance by Frederick Jones on his marriage (subject to above mortgages) to M. and N. upon trust for sale, the proceeds of sale being settled by a deed of even date.	8th August 1927.
Death of M.	12th November 1927.

(*e*) The will is not abstracted, for probate alone is evidence that the legal estate has vested in R. and S.: Ad. of E. Act, 1925, s. 22.

(*f*) The assent, in favour of a purchaser, is complete evidence that Fred. Jones is entitled to the fee simple without investigating the equitable title: Ad. of E. Act, 1925, s. 36; S. L. Act, 1925, ss. 7 (5), 110 (5). It is assumed that the executors are satisfied that the duties will be paid: Ad. of E. Act, 1925, s. 36 (10); S. L. Act, 1925, s. 8 (6). They can give possession before assenting: Ad. of E. Act, 1925, s. 43.

(*g*) See L. P. Act, 1925, ss. 85, 87.

20th December 1927. Appointment of F. as trustee of the conveyance on trust for sale in the place of M., and jointly with N.

10th June 1928. *Conveyance by the then estate trustees of the C. Assurance Society, under their power of sale as first mortgagees, to John Williams in fee.*

[NOTE.—The title being made under the power of sale of the estate trustees, the fee simple passes and not merely the mortgage term.(*h*) They can if desired convey the fee in the name[s] of [M.(*i*) and] N. It is unnecessary to disclose the second and third mortgages or the conveyance on trust for sale. It would have been necessary to disclose them if title had been made by the trustees for sale, as the mortgages and the conveyance all dealt with legal estates. The right to vest the debt and mortgaged property in estate trustees by memorial enrolled under a Private Act is preserved.(*j*)

No evidence of deaths, births, &c., is required. Probate of the will of H. Jones is conveyancing evidence of his death.]

12th January 1929. John Williams leaves Great Britain and Northern Ireland is believed to be alive but cannot be found.

10th August 1929. *Private Act passed authorising the X. Company to acquire Blackacre under compulsory powers.*

15th June 1930. *Statutory Declaration as to facts known with reference to John Williams.*

16th June 1930 *Deed Poll by X. Company (who by their agent (k) also execute in the name of John Williams) under section seventy-seven of the Lands Clauses Consolidation Act,* 1845, *vesting the land in themselves.*

[NOTE.—This is an example of an exercise of a power over a legal estate the operation of which is expressly preserved.(*l*)]

(*h*) See *ib.*, s. 88; this is a case of legal estates being overreached; the second and third mortgagees would register land charges: L. C. Act, 1925, s. 10, class C. (i); but this does not prevent them from being overreached by the first mortgagees: *ib.*, s. 22.

(*i*) M. & N. should read N. & F.

(*j*) L. P. Act, 1925, s. 7 (3).

(*k*) As to corporations acting as attorneys: L. P. Act, 1925, s. 74. When practicable the powers for transferring legal estates must be exercised in the name of the estate owner: *ib.*, s. 7 (4).

(*l*) L. P. Act, 1925, s. 7 (3).

Specimen No. 2.

Of the Title of the Trustees of Frank Smithers to Greenacre.

Relating to undivided Shares.

Mortgage by James Smith of Greenacre to M. Company, Limited, in fee to secure 1,000*l. and interest.*	2nd January 1910.
Will of James Smith devising Greenacre to his ten children named therein in equal shares and appointing E. to be his executor.	4th February 1910.
Death of James Smith, leaving the ten children surviving.	1st March 1910.
Probate by E.	3rd April 1910.
Assent by E. to the devise to the ten children.	4th December 1910.
Mortgage by one of the sons of his tenth share.	5th January 1911.
Conveyance by one of the daughters on her marriage of a tenth share to trustees on trust for sale, the net proceeds to be held on the trusts of her settlement of even date.	15th April 1911.
Settlement by another of the sons of his tenth share and appointing Settled Land Act trustees.	20th May 1911.
Will of another daughter devising her tenth to her husband and appointing him executor.	8th June 1913.
Death of the testatrix.	20th June 1913.
Probate by her husband.	4th August 1913.
Death of another son intestate.	2nd May 1918.
Letters of administration granted to two of his brothers.	30th July 1918.
The Law of Property Act, 1925, comes into operation and vests Greenacre, subject only to the mortgage of 1910 affecting the entirety (which is converted (*m*) into a mortgage for a term of three thousand years), in the Public Trustee, pending the appointment of new trustees, on trust for sale.(*n*)	1st January 1926.
Order of the court (Chancery Division) made on the application of persons entitled to six tenths, appointing M. and N. to be trustees of the trust affecting Greenacre in place of the Public Trustee.(*o*)	4th June 1926.
Conveyance on sale to Walter Robinson by M. and N., the M. Company, Limited, being paid off out of part of the purchase money, and joining to surrender the three thousand years term.	7th May 1927.
[Note.—The balance of the purchase money is available in the hands of the trustees to answer the claims of the mortgagee and other persons interested in undivided shares.(*p*)]	

(*m*) L. P. Act, 1925, 1st Sch., Pt. VII.

(*n*) *Ib.*, 1st Sch., Pt. IV, para. 1 (4).

(*o*) This assumes that it is simpler to apply to the court than for the persons entitled to six-tenths to obtain the consent of incumbrancers of undivided shares: *ib.*, 1st Sch., Pt. IV, para. 1 (4) (iii).

(*p*) *Ib.*, s. 35.

4th June 1927. Will of Walter Robinson devising and bequeathing Greenacre and his residuary real and personal estate to X. and Y. upon trust for his son John Robinson for life with remainder upon trust for his first and other sons successively according to seniority in tail male with remainder upon trust for the same sons in tail general with remainder upon trust for all the daughters of John Robinson as tenants in common in tail with cross remainders in tail between them in equal shares. Appointment of X. and Y. to be executors and Settled Land Act trustees.

1st December 1927. Death of testator.

20th April 1928. *Probate by X. and Y.*

3rd May 1928. *Assent by X. and Y. vesting the settled land in John Robinson upon the trusts of the will of Walter Robinson, and stating that they are the trustees of the settlement.*(*q*)

14th July 1928. Will of John Robinson appointing his daughters Mary Robinson and Jane Robinson his executors.

16th March 1930. Death of John Robinson without having had a son and leaving five daughters.

12th June 1930. *Probate by X. and Y. in regard to the settled land.*(*r*)

25th July 1930. *Assent by X. and Y. to the vesting of the settled land in themselves on trust for sale, the net proceeds to be held on the trusts of the will of Walter Robinson.*(*s*)

7th January 1931. *Conveyance on sale by X. and Y. of Greenacre to Frank Smithers in fee.*

8th January 1931. Equitable charge by Frank Smithers to James Montagu by way of indemnity and agreement to vest Greenacre in a trust corporation on trust for sale to raise the money when the amount is ascertained and for other purposes.

[NOTE.—A mere equitable charge not secured by deposit of documents can be overridden when the land is made subject to a trust for sale (*t*) without joining the chargee.]

(*q*) For form of vesting assent: S. L. Act, 1925, 1st Sch., Form No. 5.

(*r*) See Ad. of E. Act, 1925, s. 22.

(*s*) The legal estate is already vested in them as special executors; they are the persons entitled to have a vesting instrument: S. L. Act, 1925, s. 36; *cf.*, L. P. Act, 1925, 1st Sch., Pt. IV, para. 2; for a form of an assent on trust for sale, see L. P. Act, 1925, 5th Sch., Form No. 9; as to vesting in themselves: *ib.*, s. 72. A vesting instrument is necessary, though S. L. Act, 1925, s. 13, does not apply when winding up the executorship.

(*t*) L. P. Act, 1925, s. 2 (2); the registration of a general equitable charge as a land charge would not prevent this: *ib.*, sub-s. 3 (v) (*b*).

Lease by Frank Smithers of part of Greenacre to his wife for life at a rent. 9th January 1932.

[NOTE.—A lease for life is made to take effect as a demise for a term of ninety years determinable by notice after the death of the lessee by his representatives or by the lessor.(*u*)]

Conveyance by Frank Smithers, of Greenacre, to a trust corporation on trust for sale subject to the lease. The net proceeds to be held on the trusts of a deed of even date, under which effect is given to the Agreement of 1931. 23rd June 1933.

SPECIMEN No. 3.

OF THE TITLE OF R. HORNE TO WHITEACRE.

WHERE THE TITLE COMMENCES AFTER THE 31ST OF DECEMBER, 1925.

Settlement by John Wilson, being a deed declaring that Whiteacre is vested in himself in fee upon the trusts of a deed of even date. 4th July 1926.(*v*)

Appointment of R. and S. to be trustees for the purposes of the Settled Land Act, 1925.

Provisions extending the powers conferred by the Settled Land Act, so far as they relate to dealings with land, and giving power for John Wilson during his life to appoint new trustees.

Trust instrument. Same date.

Trusts declared for John Wilson for life, with remainder.

Upon trust that Elizabeth Wilson, if she survives him shall have a rentcharge of 200*l.* during the residue of her life, and subject thereto

Upon trust for R. and S. for a term of five hundred years to raise five thousand pounds portions for younger children of John Wilson, with remainder

Upon trust for Henry Wilson for life, with remainder

Upon trust for H. and K. for a term of one thousand years to raise five thousand pounds portions for younger children of Henry Wilson, with remainder

Upon trust for the first and other sons of Henry Wilson successively in tail, with further remainders over. Appointment of R. and S. to be Settled Land Act trustees. Extension

(*u*) L. P. Act, 1925, s. 149 (6).

(*v*) For forms of vesting instrument and trust instrument: S. L. Act, 1925, 1st Sch., Form Nos. 2 and 3, and see s. 4; unless made in this way the settlement will not pass the legal estate. For the protection of a purchaser without notice, see s. 13.

of Settled Land Act powers by reference to the vesting deed of even date or otherwise. Power for tenant for life of full age to appoint new trustees.

4th September 1926.(*w*) Appointment of new trustee of the trust instrument and of the five hundred years' term.

Recites that S. is incapable of acting. Appointment by John Wilson of P. to be trustee of the term of five hundred years and for the purposes of the Trust Deed in the place of S. and jointly with R. Declaration (express or implied) vesting the equitable term of five hundred years in R. and P.

Same date. *Deed stating that R. and P. are the trustees of the settlement. Memorandum of the deed endorsed on the Vesting Deed*(*w*).

7th January 1927. Will of John Wilson appointing Isaac James and Joseph James executors.

3rd September 1927. Death of John Wilson, leaving younger children and his widow.

4th April 1928. *Will of John Wilson proved by R. and P. in regard to the settled land.*(*x*)

1st October 1928. Assignment by R. and P. to B. of term of five hundred years by way of mortgage for securing five thousand pounds and interest.

[NOTE.—As money has been raised on the term the mortgagee could call on the executors to create a legal term for securing it in priority to the settlement.(*y*)]

2nd December 1928. *Assent by R. and P., as personal representatives, to the vesting of the settled land in Henry Wilson in fee upon the trusts of the Trust Deed.*

Statement that R. and P. are the trustees of the settlement. Power for Henry Wilson during his life to appoint new trustees.

The same provisions for extending powers conferred by the Settled Land Act as are contained in the vesting deed.

[NOTE.—These may be inserted either expressly, if short, or by reference to the former vesting deed, if long.(*z*)]

2nd June 1929. Appointment of James Cook and Harry Cook to be trustees of the Trust Deed.

2nd June 1929. *Deed stating that they are the trustees of the settlement. Endorsement of notice on the vesting deed.*(*a*)

(*w*) S. L. Act, 1925, s. 35; T. Act, 1925, s. 35. There must not be more than four trustees: T. Act, 1925, s. 34; as to evidence of a vacancy in a trust, *ib.*, s. 38; as to implied vesting declaration: *ib.*, s. 40.

(*x*) Ad. of E. Act, 1925, s. 22.

(*y*) S. L. Act, 1925, s. 16.

(*z*) *Ib.*, s. 5 (2).

(*a*) *Ib.*, s. 35; T. Act, 1925, s. 35.

Transfer of the mortgage for five thousand pounds by B. to C.	4th November 1929.
Death of Henry Wilson, leaving Thomas Wilson, his eldest son, and two younger children.	10th July 1930.
Letters of Administration to the settled land of Henry Wilson granted to James Cook and Harry Cook.(*b*)	1st October 1930.
Disentail by Thomas Wilson.(*c*)	3rd November 1930.
Release by C. on payment off of his mortgage debt of five thousand pounds and surrender of the equitable term of five hundred years.	4th November 1930.
Death of Elizabeth Wilson.	10th November 1930.
[NOTE.—Though her jointure took effect in equity only she has power to create a term of years absolute for raising arrears of the jointure, and the estate owner would be bound to give legal effect to a mortgage of the term.(*d*)]	
Release by two younger children of Henry Wilson of their portions.	20th November 1930.
Demise by Thomas Wilson to L. and M. for an equitable term of eight hundred years, subject to cesser on payment of five thousand pounds and interest.	Same date.
Demise by James Cook and Harry Cook to L. and M. for the term of eight hundred years, subject to cesser on redemption or charge by way of legal mortgage.(*e*)	Same date.
Assent by them to the vesting of the settled land, subject to the term or legal charge, in Thomas Wilson in fee, without nominating Settled Land Act trustees.(*f*)	Same date.
Conveyance by Thomas Wilson and L. and M. to R. Horne in fee.	10th March 1931.

SPECIMEN NO. 4.

OF THE TITLE OF THE ADMINISTRATORS OF M. CURTIS TO RICH AND MIDDLE FARMS.

RELATING TO INFANTS.

Will of James Wilcox devising Rich Farm and Middle Farm to the use of his elder son John Wilcox (an infant) for his life with remainders over for the issue of John Wilcox which failed	2nd January 1922.

(*b*) Jud. Act, 1925, ss. 155, 162; Ad. of E. Act, 1925, ss. 23, 24.
(*c*) No enrolment is required: L. P. Act, 1925, s. 133.
(*d*) L. P. Act, 1925, ss. 8 (2), 121; S. L. Act, 1925, s. 16.
(*e*) L. P. Act, 1925, 5th Sch., Form No. 5; S. L. Act, 1925, s. 16; Ad. of E. Act, 1925, ss. 39-40.
(*f*) S. L. Act, 1925, s. 8 (7); Ad. of E. Act, 1925, s. 36 (10).

with remainder to the use of his younger son Gilbert Wilcox (an infant) for his life with remainders over. Appointment of X. and Y. to be executors and Settled Land Act trustees.

4th February 1922. Death of testator, leaving his two sons, giving dates of their births.

12th May 1922. *Probate by X. and Y.*

15th December 1922. Assent to the devise, John Wilcox being still an infant.

1st January 1926. The Settled Land Act, 1925, and the Law of Property Act, 1925, come into force and vest the settled land in X. and Y. as Settled Land Act trustees by reason of John Wilcox being an infant.(*g*)

4th January 1926. *Instrument declaring that the settled land is vested in X. and Y.*

3rd June 1926. Death of John Wilcox a bachelor and an infant.

29th September 1926. *Conveyance on sale of Rich Farm by X. and Y. to M. Curtis.*

12th October 1927. *Conveyance by X. and Y. vesting Middle Farm in Gilbert Wilcox (who had attained full age) on the trusts of the will of James Wilcox with a statement that they are the trustees of the settlement.*

10th November 1927. *Conveyance on sale of Middle Farm by Gilbert Wilcox to M. Curtis, X. and Y. joining to receive the purchase money.*

1st February 1928. Will of M. Curtis purporting to appoint his infant son John Curtis executor.(*h*)

3rd April 1928. Death of M. Curtis.

5th September 1928. *Letters of administration with the will annexed granted to M. and N.*

[Note.—Administration will either be granted to a trust corporation or to not less than two individuals; if there are Settled Land Act trustees, it will, as respects the settled land, be granted to them.(*i*)]

Specimen No. 5.

Of the Title of George Smith to Houses in John Street.

Relating to Leasehold Property.

25th March 1921. *Lease by Charles Robinson to Henry Chubb, of* 10 *to* 16 *(even numbers) John Street, in the city of X., for* 99 *years from date at a yearly rent of* 5*l. for each house.*

(*g*) S. L. Act, 1925, 2nd Sch., para. 3; the will becomes a trust instrument: S. L. Act, 1925, s. 9; there must be a vesting instrument as the executors have ceased to act as personal representatives: *ib.*, para. 2, s. 26. If counsel's certificate as to title is given it should be abstracted after the vesting instrument, it will not then be necessary to investigate the equities.

(*h*) Probate will not be granted to an infant: Ad. of E. Act, 1925, s. 20; Jud. Act, 1925, s. 165; no interest vests in him as executor till probate is granted to him after he is of full age: *ib.*, sub-s. 2.

(*i*) During a minority or the subsistence of a life interest representation will be granted to a trust corporation or to not less than two individuals: Ad. of E. Act, 1925, s. 1; Jud. Act, 1925, s. 160. Not more than four administrators will be appointed of the same property: *ib.*

First Mortgage (by subdemise) by Henry Chubb to A. for the residue of the term less three days for securing 3,000*l.* *and interest. Declaration by Henry Chubb that he holds the head term in trust for A. subject to redemption.* — 26th March 1921.

Second Mortgage (by subdemise) to B. for the residue of the term less two days for securing 1,000*l.* *and interest. Declaration by Henry Chubb that (subject to the First Mortgage) he holds the head term in trust for B. subject to redemption.* — Same date.

Third Mortgage (by subdemise) to C. for residue of term less *one* day for securing 500*l.* and interest.(*j*) — Same date.

Transfer of First Mortgage by A. to T. in trust for Henry Chubb, who pays off the First Mortgage debt. — 24th December 1924.

The Law of Property Act, 1925, comes into operation. — 1st January 1926.

[Note.—It extinguishes the first mortgage term, because Henry Chubb was not entitled to keep it alive to the prejudice of his mesne incumbrancers.(*k*)]

Order of Court directing Henry Chubb to hand over the Lease, First Mortgage, and Transfer of that Mortgage to B. — 1st July 1926.

Assignment on sale by B., under his power, to George Smith. — 20th July 1926.

[Note.—This conveys the head term created by the Lease and extinguishes all the mortgage terms. The head term may, if desired, be conveyed in the name of Henry Chubb.(*l*)]

The following further epitomes have been added by the editors to illustrate other points of practice arising under the New Acts.

Specimen No. 6.

Of the Title of Robert Davis to Copyholds and other Land subject to Manorial Incidents.

Relating to Enfranchised Land.

Settlement by John Davis of freeholds to the use of himself for life with remainder to the use of his first and other sons in tail male with remainders over. Appointment of X. and Y. to be Settled — 2nd January 1900.

(*j*) Any number of legal sub-terms can be created out of the head term granted by the lease provided a nominal reversion is left in each case; the sub-terms may be all of the same duration, but when it is practicable the subsequent terms are generally longer than the preceding terms: L. P. Act, 1925, s. 149 (5); 1st Sch., Pt. VII, para. 2; Pt. VIII, paras. 2, 6 (*b*).

(*k*) L. P. Act, 1925, ss. 5, 115 (3), 116, 1st Sch., Pt. II, para. 1

(*l*) L. P. Act, 1925, s. 89 (1).

Land Act trustees. Covenant by John Davis to surrender Brownacre parcel of the Manor of Q. To the use of X. and Y. and their heirs, there being a custom to entail,(m) upon trusts corresponding to the uses of the freeholds.

20th January 1900. Admission of X. and Y. and their heirs on the surrender of John Davis.

4th February 1901. *Birth of Robert Davis.*

5th February 1901. *Death of Mary Davis, wife of John Davis.*

1st December 1918. *Death of X., one of the trustees.*

3rd February 1919. *Appointment of R. to be a trustee in place of X.* and covenant by Y. to surrender Brownacre to the use of himself and R. and their heirs.

4th April 1923. *Disentailing Assurance (enrolled on the Court Rolls) by Robert Davis, eldest son of John Davis, with the concurrence of his father.*

5th April 1923. *Resettlement by John Davis and Robert Davis of the freeholds which had been separately disentailed to uses giving Robert Davis the first life interest. Also of Brownacre upon trust for John Davis for life with remainder upon trust for Robert Davis for life with remainders over. Appointment of Y. and R. to be Settled Land Act trustees. Covenant by Y. to surrender Brownacre to the use of Y. and R. to be held on the trusts of the Resettlement.*

6th April 1923. *Will of John Davis appointing Y. and R. executors and Settled Land Act trustees.*

Devise of freehold land subject to a quit rent and a customary relief (n) to the uses of the Resettlement.

Devise of Blueacre parcel of the Manor of Q. held for lives with a customary right of perpetual renewal (o) to Y. and R. upon trust to renew and hold on the trusts affecting Brownacre under the Resettlement.

1st November 1925. Death of John Davis.

23rd December 1925. *Probate of his Will by Y. and R.*

Absence of custom to entail.

(*m*) If, for want of a custom to entail, a fee simple conditional on the birth of issue has been created, it will, unless it has become a fee absolute, be converted into an equitable entailed interest: L. P. Act, 1922, 12th Sch. (8) (ii). This Settlement of 1900 will drop off the title when not wanted as a root of title.

Customary relief.

(*n*) This class of land is within Pt. VI of the L. P. Act, 1922 (see s. 138), hence the manorial incidents fall to be extinguished in the same way as if the land had been copyhold.

(*o*) This falls within s. 135 of the L. P. Act, 1922, hence is enfranchised, the fee simple being acquired, not a long term as in the case of perpetually renewable leaseholds within the 15th Sch.

The Law of Property Act, 1922 (see Law of Property Act (Postponement) Act, 1924), and the Law of Property Act, 1925, and the Settled Land Act, 1925, come into force. 1st January 1926.

[NOTE.—The Acts vest the fee simple in Brownacre and Blueacre as well as in the freehold and customary land in Robert Davis.(*p*)]

Instrument declaring that the land is vested in Robert Davis on the trusts of the Resettlement and that Y. and R. are the Settled Land Act trustees.(*q*) 1st May 1927.

Building Lease granted by Robert Davis of Brownacre to Henry Hodge for nine hundred and ninety-nine years (*r*) *with certificate endorsed by Steward of the Manor.* 10th May 1927.

Compensation Agreement between the lord of the manor (*s*) *and Robert Davis as respects Brownacre the freehold land subject to a quit rent and relief and Blueacre, Y. and R. concurring to pay a gross sum out of capital money.*(*t*) 14th June 1928.

SPECIMEN NO. 7.

OF THE TITLE OF EDWIN ELLIS TO THREE TERMS OF 2,000 YEARS EACH IN NOS. 1–3, SNOW STREET.

RELATING TO PERPETUALLY RENEWABLE LEASEHOLDS.

Lease by X. Corporation of No. 1 Snow Street to Edwin Ellis for 60 years from 25th March 1915 at a rent, covenant on payment 24th March 1915.

(*p*) The fee simple is acquired by virtue of L. P. Act, 1925, 1st Sch., Pt. II, and vested in Robert Davis, the tenant for life. It is immaterial that Y. remained tenant on the rolls as respects Brownacre. Robert Davis cannot, however, deal with the legal estate until a vesting instrument has been executed: S. L. Act, 1925, s. 13.

(*q*) Robert Davis already has the land vested in him, hence this vesting instrument is not an assurance, it does not operate to vest the land or any interest therein in any person within sub-s. 9 of s. 129 of the Act of 1922. If counsel's certificate of title is given when the vesting instrument is made, the equities leading to the vesting instrument need not be investigated. The certificate, if any, should be abstracted.

(*r*) The Building Lease must be produced to the steward within six months from date and endorsed by him subject to the customary payments being made. It would not have been capable of being effected by a customary assurance, but a licence would have been required; a like fine is payable as would have been exacted for a licence: L. P. Act, 1922, s. 130 (2). A term of 999 years can be granted: S. L. Act, 1925, s. 41. The fine will be payable out of capital money: *ib.*, s. 73 (1) (vi).

(*s*) Whoever would make title on a sale of the manor, *e.g.*, a tenant for life and S. L. Act trustees, or personal representatives, or trustees for sale, act as the lord for the purposes of a compensation agreement: L. P. Act, 1922, ss. 138 (3), 188 (8).

(*t*) Where capital money is available the compensation is payable in a gross sum: L. P. Act, 1922, s. 139 (1) (v) proviso; see also S. L. Act, 1925, s. 73 (1) (vii).

of a fine to renew at end of 14th year for further 60 years with similar covenant for perpetual renewal.

24th June 1915. *Underlease by Edwin Ellis of No. 1 Snow Street to J.Thomson for residue of term of 60 years less three days at an improved rent, covenant perpetually to renew the head lease and perpetually to renew underlease at end of 14 years on payment of a fine.*

10th May 1916. Agreement by Edwin Ellis in consideration of marriage to charge the head lease with the payment of an annuity of £500 for Maria Jones if she marries and survives him and with the payment on his death of £2,500 for each child of the marriage who attains full age with interest from date of his death at 4 per cent. And, when so required by any person beneficially interested, to provide further security.

11th May 1916. Marriage of Edwin Ellis and Maria Jones.

13th November 1925. Contract by X. Corporation with Edwin Ellis to grant him a lease of No. 2 Snow Street for 60 years from 25th March 1925, at a rent with a right of perpetual renewal at the end of 14 years on payment of a fine.(*u*)

1st January 1926. The Law of Property Act, 1922, comes into force. It vests No. 1 Snow Street in Edwin Ellis for a term of 2,000 years from 25th March, 1915,(*v*) and in J. Thomson for a like term less one day (*w*) and gives Edwin Ellis a right (*x*) to a term of 2,000 years in No. 2 Snow Street.

10th February 1926. *Purported lease by X. Corporation to Edwin Ellis of No. 2 Snow Street for 60 years from 25th March, 1925, at a rent with a perpetual right of renewal in accordance with the expressed terms of the contract of* 1925.(*y*)

14th February 1926. Purported contract by X. Corporation with Edwin Ellis to grant him a lease of No. 3 Snow Street for 60 years from 25th March, 1926, at a rent with a right of perpetual renewal at the end of 14 years on payment of a fine.(*y*)

(*u*) The contract, even when made under a power, does not come on the title when the lease is granted: L. P. Act, 1925, s. 44 (9).

(*v*) L. P. Act, 1922, 15th Sch., para. 1.

(*w*) *Ib.*, 15th Sch., para. 2.

(*x*) *Ib.*, 15th Sch., para. 6.

(*y*) This is a serious mistake for the lessor to make, for the lease operates as a demise for 2,000 years from 25th March, 1925, and he loses his right to fines for renewal: L. P. Act, 1922, 15th Sch., para. 5. If he had demised a term of 2,000 years he would (*ib.*, para. 6) have been entitled to an adjustment of the rent.

Lease by X. Corporation of No. 3 Snow Street to Edwin Ellis for 2,000 years from 25th March, 1926, at a rent.(*z*) — 3rd December 1926.

Memorandum signed by Edwin Ellis and signed (*a*) *on behalf of X. Corporation endorsed on the head lease of 1915, agreeing the amount of additional rent in lieu of fine and the times for payment.*(*b*) — Same date.

Memorandum signed by J. Thomson and Edwin Ellis endorsed on the underlease of 1915 agreeing the amount of the additional rent in lieu of fine and the times for payment.(*c*) — Same date.

Underlease by Edwin Ellis to J. Thomson of No. 2 Snow Street for 2,000 years less three days, from 25th March, 1925, at an improved rent. — 4th December 1926.

Underlease by Edwin Ellis to J. Thomson of No. 3 Snow Street for 2,000 years less three days from 25th March, 1926, at an improved rent. — Same date.

Vesting instrument by Edwin Ellis declaring that he holds the terms created by the three head leases, subject to and with the benefit of the three underleases, on trust to give effect to all equitable interests and powers affecting the same, and in particular those declared by a deed of even date. — 2nd April 1927.

Appointment of the N. Bank, Ltd., who execute, to be Settled Land Act trustees.(*d*)

Trust instrument for giving effect to the marriage articles of 1916. Edwin Ellis declares that he holds the property comprised in the three head leases upon trust for himself for life *sans* waste with remainder Upon trust that Maria Ellis should after his death receive a yearly rentcharge of — Same date.

(*z*) Here, again, the lessor loses his rights in respect of the fine under the contract; the contract operates to give a right to a 2,000 years' term: *ib.*, s. 7 (1).

(*a*) For the power to sign by an agent, see L. P. Act, 1925, s. 74 (2).

(*b*) This endorsement becomes conclusive evidence: L. P. Act, 1922, 15th Sch., para. 14 (2). That paragraph gives power to make the necessary adjustments in the rent and the times for payment. It will usually be expedient for the additional rent to be made payable on the same days as the original rent. For the covenants and powers implied in leases made to take effect for 2,000 years or for that term less one day, see *ib.*, para. 10. The leases must be produced to the lessor within one year from 1st January, 1926; he will endorse notice that a right of renewal was subsisting on that date: *ib.*, para. 10 (1) (iii). As the leases are for such a long term they may become undecipherable, hence provision is made for office copies: *ib.*, para. 20.

(*c*) This shows that the underlease has been produced within one year in accordance with: *ib.*, 15th Sch., para. 10 (1) (iii).

(*d*) This is an example of a vesting instrument within S. L. Act, 1925, s. 21, enabling equitable interests created before the settlement to be overreached.

£500 during the residue of her life and subject thereto. Upon trust for the N. Bank, Ltd., for a term of 1,500 years from his death, *sans* waste, on trust to raise portions and interest in satisfaction of the principal money and interest agreed to be charged and subject thereto In trust for himself.

Appointment of the N. Bank, Ltd., to be Settled Land Act trustees.

Importance of Abstracts.

Importance of correct abstracts.

The importance of preparing correct short abstracts has already been stressed; when the new practice has been in force for a short time it will be possible to ascertain with greater certainty the class of cases where mistakes are likely to arise. It may therefore be expedient, in future editions, to add to the number of specimen epitomes. But when it is clearly understood that the L. P. Act, 1925, on 1st January, 1926, vests legal estates in the persons entitled to—

A new start in 1926.

(a) The fee simple in land in possession ;

(b) A term of years absolute in land ;

that "land" includes—

(i) Rentcharges, tithe rentcharge and land tax.

(ii) Easements ;

and that the legal estates are the interests to be traced, there ought not, even during the first few years, to be any insuperable difficulty in the preparation of abstracts.

Registered Land.

Abstracts in relation to registered land.

In the case of absolute titles and good leasehold titles, no ordinary abstracts are required at all. But in place thereof, the authority to inspect the register, copies of registered entries and filed plans, and copies or abstracts of documents noted on the register must be furnished in accordance with L. R. Act, 1925, s. 110.

If the title is possessory, the abstract will cover the period down to the date of first registration ; if the title is qualified the abstract will be confined to matters excluded from the effect of registration.

CHAPTER VI.

Abstracts and Searches.

Sec. I.—*Abstracts and their Verification.*

Commencement of title.

In the absence of stipulation to the contrary, the title on the sale of freeholds should be deduced for a period of thirty years, that period having been substituted for the period of forty years formerly required by the V. & P. Act, 1874, s. 1; nevertheless, where an earlier title than forty years might have been required under the former practice, an earlier title than thirty years may still be required: L. P. Act, 1925, s. 44 (1).

Root of title.

A purchase deed, or marriage settlement operating to pass the legal estate or the right to acquire it under L. P. Act, 1925, 1st Sch., is a good instrument with which to commence the abstract. If the property passed under a general devise contained in the Will of a person who died thirty years since, and the Will is made the root of title, then, in the absence of any stipulation to the contrary (see General Conditions of 1925), proof by old leases, statutory declarations, receipts of rent, parish books, &c., will have to be supplied that the testator was in possession of the property, or in the receipt of the rents and profits thereof, at his death. In the case of deaths after 1925 the Will does not come on the title to the legal estate, probate followed by an assent in writing takes its place, unless the executors are making title before an assent is given. On an intestacy after 1925 the legal estate will pass to the administrators; they can assent in writing to its passing to persons named in the assent, in the same way as executors. A purchaser can rely on the assent without investigating the title under the Will or intestacy, but he must inspect the probate or letters of administration to see that there are no endorsements thereon. Formerly, under Pt. I of the L. T. Act, 1897, an administrator could not assent at all; he had to convey, and an executor could only assent to a devise. That Act did not extend to a legal customary estate in copyholds. The statutory power of appropriation is exercisable by administrators as well as by executors.

General devise.

Probate, &c. and assent.

Appointment under power.

If the abstract commences with an appointment thirty years old, or made the root of title, the deed creating the power need

not be abstracted: L. P. Act, 1925, s. 45 (1). But an appointment made after 1925 will not pass a legal estate, hence is not a good root of title: *ib.*, s. 1 (7). If incumbrances were subsisting at the date of the document expressed to be fixed as the commencement of title, then the condition fixing the root will not be binding on the purchaser unless it refers to them, or they will be overreached.

Incumbrances.

Powers of attorney.

Powers of attorney under which any abstracted document is executed must be produced: L. P. Act, 1925, s. 45 (1); but as to powers referred to in court rolls see General Conditions of 1925.

Enfranchised land.

A purchaser of enfranchised land is not entitled to call for the title of the lord of the manor to make the enfranchisement. As respects the freehold title, the enfranchisement deed will be the root of title, whether or not it was executed within the period of thirty years: L. P. Act, 1925, s. 44 (6). A purchaser is not concerned with the title of the lord of the manor to enter into a compensation agreement made for extinguishing manorial incidents: L. P. Act, 1925, s. 44 (7). Where land has not been enfranchised before 1926, it becomes automatically enfranchised immediately after 1925 by virtue of the L. P. Act, 1922, 12th Sch., and the fee simple or other estate vests in the persons entitled without any conveyance: L. P. Act, 1925, 1st Sch., Pt. II; S. L. Act, 1925, 2nd Sch.

The former copyhold title.

The former copyhold title has now to be abstracted, not, as before 1926, to show who are the tenants on the rolls, but to show in whom the land is vested by the L. P. Acts of 1922 and 1925 on the 1st January, 1926, for those persons and their successors are the persons who must make title and enter into any compensation agreement.

How the land is vested by the Acts.

In the following cases the Acts (L. P. Act, 1922, 12th Sch., as amended, and L. P. Act, 1925, 1st Sch.) vest the land in the persons who are on the rolls, for instance:—

(a) Where the beneficial owner of full age entitled either in fee simple or as tenant for life is on the rolls;

(b) Where trustees holding the land on trust for sale are on the rolls;

(c) Where personal representatives, entitled to administer the land, are on the rolls;

But where, for instance, the land belongs to:—

(a) A corporation, the tenants on the rolls being individuals;

(b) A tenant for life of full age, or an absolute owner, but the tenants are trustees or former trustees or nominees;

(c) Trustees holding on trust for sale, but one or more of them or other persons are on the rolls ;

(d) Personal representatives, entitled to administer it, but other persons are on the rolls ;

then the Acts vest it in the persons to whom it belongs, the tenants on the rolls being ruled out.

Infants.

Again, if an infant is absolutely entitled or would have been a tenant for life if of full age, then the land is vested in the statutory owners or personal representatives entitled to administer it during the minority.

Mortgagees.

Mortgagees, of full age, whether on the rolls or not, will only take mortgage terms, not the fee simple.

Persons entitled to easements for an estate in fee simple or for a term of years absolute will take corresponding legal estates in the easements.

Derivative estates.

Persons entitled to rentcharges, either perpetual or held for a term of years absolute, will take legal rentcharges for corresponding estates.

Undivided shares.

Where the land is held in undivided shares, the entirety will vest in the trustees for sale on the statutory trusts.

Where the land belongs beneficially to joint tenants, it will be held on trust for sale.

Infants.

Where the legal estate in land belongs beneficially to an infant and a person of full age, it will be held on trust for sale ; the infant will not take any legal estate, his co-owner of full age will take it.

On the other hand, if an infant and a person of full age have life interests in the land, it will vest in the person of full age as settled land : S. L. Act, 1925, s. 19.

If there are no tenants on the rolls, it will make no difference to the vesting ; the land will vest in the persons of full age entitled thereto in accordance with the principles indicated above.

No infant trustee, personal representative or mortgagee will take a legal estate.

Land affected by manorial incidents.

Until the manorial incidents are extinguished all assurances, including probates and letters of administration (but not leases for a year or less or from year to year or an assignment of such leases) must be produced to the steward for endorsement and the customary payments must be made as if the land had not been enfranchised : L. P. Act, 1922, s. 129. But in other respects the land will be dealt with as if it were freehold.

Deduction of title, what abstract should state.

Subject to the statutory conditions, the title should be properly commenced, and satisfactorily deduced as to the legal estate :

see last chapter. The abstract must show that the vendor is entitled to the "legal estate" (as defined by the L. P. Act, 1925, s. 1) intended to be transferred or dealt with, free from all incumbrances except such as will be satisfied, or overreached. The abstract should include every instrument and fact affecting the legal estate since the commencement of title, and which, if still subsisting, cannot be overreached. But leases which have expired by effluxion of time, and mortgages by deposit, which have been or will be discharged before completion, must not be abstracted.

As to right of purchaser to inspect ancient deeds.

A purchaser is not entitled before completion to the production and inspection of deeds, other than powers of attorney, whether in the vendor's possession or not, of earlier date than the deed forming the stipulated or statutory root of title, though he may be entitled to have them handed over to him on completion if they do not relate to other land, or to trusts which are still subsisting: L. P. Act, 1925, s. 45 (9).

On sale in lots.

Where property is sold in lots a purchaser of two or more lots is not entitled to more than one abstract of the common title: L. P. Act, 1925, s. 45 (5).

Inquiry as to existing leases.

If the property is subject to any existing leases, the vendor before the sale should allow the purchaser to inspect the counterparts, so that it may be seen that they contain no special provision in favour of the lessee—as, for instance, a right of preemption—and that the lessor has entered into no covenant which could prove a burden on the estate in the hands of the purchaser.

Acts of Parliament to be noted in the abstract.

It is convenient that Acts of Parliament which alter tenure or in any way affect the title to the land should be noted in the abstract.

Trust instruments not to be abstracted.

Documents relating merely to the trusts affecting the proceeds of sale of land (L. P. Act, 1925, ss. 23–33), or to trusts affecting mortgage debts (*ib.*, s. 113), or to the trusts affecting settled land (see last chapter) (with the exception referred to in S. L. Act, 1925, s. 110 (2) proviso) will not be abstracted. If, as will be usual, counsel's certificate of title is obtained in the cases excepted by s. 110 (2) of the S. L. Act, 1925, in accordance with the General Conditions of 1925, the exception referred to will no longer apply.

Pending actions, writs, deeds of arrangement and land charges.

It has not hitherto been the practice to abstract official certificates of search of matters within the L. C. Act, 1925, but it would be convenient if this practice were altered, for these searches are now of great importance.

Memorandum of registration of deeds.

If the property is in Middlesex or Yorkshire, the abstract should state at the foot of each document the memorandum of registration, with a reference to the year, book, and number. After 1925 only documents transferring or creating a legal estate will be registered in a local deeds registry (L. P. Act, 1925, s. 11), save that in Yorkshire general equitable charges, restrictive covenants, equitable easements and estate contracts can be registered as land charges instead of at the Land Registry: L. C. Act, 1925, s. 10 (6).

Registration of title.

Where a title is registered under the L. R. Act, 1925, a note of the registration will be indorsed on the last purchase deed; a purchaser in this case will arrange to search the register; he will not, as a general rule, be able to acquire a legal estate in registered land save under a registered disposition.

As to marriage articles.

Articles before marriage made after 1925, registered as a land charge (L. C. Act, 1925, s. 10, Class C (iv)), but not otherwise (S. L. Act, 1925, s. 11), should be abstracted. When made before 1926, effect can be given thereto by vesting and trust instruments. The old practice was to abstract them to show that the settlement was duly carried out.

Births, deaths, &c. Evidence not usually necessary.

Where it is necessary to show the birth, death, or marriage (see the Marriage Act, 1898, s. 7) of any person, the fact must, apart from the contract, be proved either by a recital or statement contained in some deed, instrument, Act of Parliament, or statutory declaration, dated twenty years before the date of the contract (L. P. Act, 1925, s. 45 (6)); or by a certified extract from the parochial registers; or from the general register under the Births and Deaths Registration Acts, 1836 to 1901; or from the burial registers established under the Burial Act, 1853, and Registration of Burials Act, 1864.(*a*) Certified extracts from non-parochial registers, which, under the Non-parochial Registers Act, 1840, and the Births and Deaths Registration Act, 1858, are deposited with the Registrar-General, are now made evidence by those Acts.(*b*)

As a general rule (see last chapter) evidence as to matters of pedigree are swept off titles to legal estates. Production of probate or letters of administration are conveyancing evidence of a death. There will be a presumption that a party to a

(*a*) As to baptisms and burials, see Parochial Registers Act, 1812, ss. 35, 37; also Dart, 7th ed., 386, 387.

(*b*) See *Re Goodrich* [1904], P. 138; 73 L. J. P. 33; *Re Woodward* [1913], 1 Ch. 392; 82 L. J. Ch. 230.

conveyance was of full age: L. P. Act, 1925, s. 15. The object is to avoid proof of birth in general cases.

Presumption of survivorship.

Where after 1925 two or more persons have died in circumstances leaving a doubt as to which was the last survivor, there is now a presumption that the youngest survived, but the court may vary this: L. P. Act, 1925, s. 184.

Presumption of death.

If a person has not been heard of for seven years, his death will be presumed as between adverse litigants; but there is no such presumption as between vendor and purchaser: Sug., 14th ed., 418; Dart, 7th ed., 382, 383. Formerly there was no presumption as to the date of death, and the onus of proving it lay on the person who claimed a right to the establishment of which the date was essential: *Re Aldersey* [1905], 2 Ch. 181; 74 L. J. Ch. 548.

Estates by descent abolished.

After 1925 the title will (save in the case of lunatics living on 1st January, 1926, and of full age) no longer depend on descent because estates by descent (other than entailed interests) have been abolished: Ad. of E. Act, 1925, s. 45. On an intestacy land vests, pending grant of administration, in the Probate Judge: *ib.*, s. 9.

New procedure on intestacy.

Upon grant of administration the administrator holds all the intestate's property upon trust for sale for the benefit of the persons entitled under the new rules for the disposition of the property of an intestate: Ad. of E. Act, 1925, ss. 33, 46. The administrator may, by assent in writing, vest the property in the persons entitled thereto; this assent will be a document of title: Ad. of E. Act, 1925, s. 36.

Evidence to be mentioned

Whatever evidence the vendor has of any matter requiring to be proved should be referred to in the abstract.

Defects in abstract.

Where a material statement is omitted from the abstract, but is made in answer to requisitions, the defect in the abstract is cured, and the cost of proving the statement will fall on the purchaser: *Re Wright and Thompson* [1920], 1 Ch. 191; 89 L. J., Ch. 66.

Proof of failure of issue.(c)

When prior estates are alleged not to have vested for default or failure of issue, the same proof of want of issue must be shown as is required to verify a pedigree. This evidence cannot be required in titles to legal estates commencing after 1925.

Proof of Wills.

In the case of Wills, the abstract is verified by production of the probate, or an office copy, which is now sufficient evidence

(c) *Re Jackson* [1907], 2 Ch. 354; 76 L. J. Ch. 553.

as to real as well as personal estate. But a Will coming into force after 1925 will not be material to the title of a legal estate.

Execution of deeds, &c.

It must be seen that every document has been properly executed and attested, and that the proper stamps have been affixed : see Stamp Act, 1891. A person who executes a deed under an assumed name does not thereby escape liability : *F. P. Shan* v. *T. Shun* [1918], A. C. 403 ; 87 L. J., P. C. 22. All deeds must be signed ; mere sealing is no longer sufficient : L. P. Act, 1925, s. 73. Where registration is necessary, it must be ascertained that the documents have been properly registered according to the statutory provisions. Enrolments of disentailing assurances and acknowledgments by married women have been abolished : L. P. Act, 1925, ss. 133, 167.

Receipt for consideration.

When the consideration money is paid at the time, it must be seen that there is a receipt for it either in the body of the deed or indorsed on it : see L. P. Act, 1925, ss. 67, 68.

Dower, curtesy, &c.

It should be seen that the property is not subject to dower, freebench, or an estate by the curtesy. In the case of persons dying after 1925, curtesy, freebench, and dower have been abolished : Ad. of E. Act, 1925, s. 45 ; except where an unbarrable right to dower or freebench, which seems to be an impossible interest, attached before 1926 ; an estate by the curtesy can still arise in equity on the death of a married woman tenant in tail : L. P. Act, 1925, s. 130. If there is a tenant by the curtesy he will be the proper person to make title under the S. L. Act, 1925. If dower has been assigned by metes and bounds, the owner becomes an ordinary tenant for life of the land so assigned.

Execution and attestation of deeds under powers.

By the L. P. Act, 1925, s. 159, a deed executed after 13th August, 1859, in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, is, so far as respects execution and attestation, a valid execution of a power by deed or instrument not testamentary, notwithstanding that some additional or other forms of execution or attestation may have been required, but where any consent is required or formality, not connected with the mode of execution or attestation of the instrument, has to be performed, those provisions must be strictly complied with.

Execution and attestation of testamentary appointments.

With regard to Wills, it is provided by the Wills Act, 1837, s. 10, that a Will executed as required by the Act shall, as far as respects the execution and attestation thereof, be a valid execution of a power notwithstanding that some additional or other

form or solemnity should be required by the instrument creating the power. If a document is invalid as a Will it is not a good execution of a power to be exercised in writing and attested by two witnesses: *Re Barnett* [1908], 1 Ch. 402; 77 L. J. Ch. 267.

Scots law.

An appointment by Will valid according to Scots law but unattested by two witnesses is valid though the power prescribes attestation by two witnesses: *Re Walker* [1908], 1 Ch. 560; 77 L. J. Ch. 370.

Inquiry as to settlements.

Where property is derived from a married woman, who acquired the property before 1926, or where she is the vendor, inquiry should be made as to any settlements or agreements for a settlement, affecting the property, which has not been noticed in the abstract.(*d*) This will avoid future disputes, though if the legal estate is acquired without notice of a covenant to settle, the title of the purchaser would be valid even under the law in force before 1926. A married woman can make title under the S. L. Act, 1925, without the concurrence of her husband.

A contract made after 1925 to make a settlement will not be enforceable against a purchaser of the legal estate for money's worth unless it is registered as a land charge: S. L. Act, 1925, s. 11; L. C. Act, 1925, ss. 10, 13, 14.

Proceedings in bankruptcy.

By s. 139 of the Bankruptcy Act, 1914, any document used in the course of any bankruptcy proceedings, if it appears to be sealed with the seal of the court or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, is receivable in evidence in all legal proceedings whatsoever. The production of a copy of the "London Gazette" containing a receiving or adjudication order is conclusive evidence of the order having been duly made and of its date: s. 137; as to evidence of proceedings at creditors' meetings, see s. 138. A petition in bankruptcy may, after 1925, be registered as a pending action: L. C. Act, 1925, ss. 1 and 2. Unless so registered protection is given to a purchaser for money's worth without notice of the bankruptcy: *ib.*, s. 3.

Identity of parcels.

When the description of the parcels has been altered, or they are not sufficiently described in the deeds, proof of identity by

(*d*) And see M. W. P. Act, 1882, s. 19, and cases thereon in 2 Wolst. & Cherry; also M. W. P. Act, 1907, s. 2; also *Lloyd's Bankg. Co.* v. *Jones* (1885), 29 Ch. D. 221; 54 L. J. Ch. 931; *Walker* v. *Linom* [1907], 2 Ch. 104; 76 L. J. Ch. 500.

leases, parish assessments, receipts for rent, statutory declarations, certificates from local authorities of change of number or other evidence, should be furnished.

Land tax.

If the property is sold discharged from land tax, the redemption of that tax is shown by the certificate of the contract, with the receipt of the cashier of the Bank of England, if the consideration for the redemption was stock ; or of the Receiver-General for the county, &c., if the consideration was money ; and the memorandum of the registration of the contract. A copy of the register, signed by the proper officer, is sufficient evidence of the contract.(*e*)

Proof of intestacy.

On an intestacy after 1925 title will be made by the administrators or the person to whom the administrator has conveyed the land. In the former case, the material document of title will be the letters of administration, and in the latter the letters with an assent in writing : Ad. of E. Act, 1925, ss. 1 and 37.

Where land is situated in Middlesex or Yorkshire, probates and letters of administration will be registered as instruments capable of transferring a legal estate to personal representatives : L. P. Act, 1925, s. 11 (2).

Evidence when title deeds are destroyed.

When the title deeds are lost or destroyed, the vendor must prove the fact of the loss or destruction, and must also furnish the purchaser with the means of showing what were the contents of the destroyed deeds, and of proving that such deeds were duly executed.(*f*) The mere loss is not a fatal defect.

Powers of attorney.

If any deed was executed by attorney, the power of attorney must be abstracted (*g*) and either the original or office copy (Jud. Act, 1925, s. 219) produced. After 1925 all powers of attorney relating to land must be filed ; a purchaser will either be entitled to the original or an office copy : L. R. Act, 1925, s. 125. Powers of attorney given for valuable consideration will devolve on the persons deriving title under the purchaser : *ib.*, s. 128. A married woman may appoint an attorney : *ib.*, s. 129. If the power was created before 1883, proof should be furnished that the donor was living at the time it was acted on. If created since

(*e*) 42 Geo. 3, c. 116, ss. 38, 164, 165 ; *Buchanan* v. *Poppleton* (1858), 4 C. B. N. S. 20 ; 27 L. J. C. P. 210. See Fin. Act, 1896, as to the redemption of land tax after the 7th Aug., 1896 ; also Dart, 7th ed., 393-395 ; and *City of London Land Tax Commrs.* v. *Central London Ry.* [1913], A. C. 364 ; 82 L. J. Ch. 274.

(*f*) *Bryant* v. *Busk* (1827), 4 Russ. 1 ; *Re Halifax Commercial Bank and Wood* [1898], 79 L. T. 536. See also Dart, 7th ed., 349, 364, n (*z*).

(*g*) As to mode of execution, see *Re Airey* [1897], 1 Ch. 164 ; 66 L. J. Ch. 152.

1882, it must be seen that it was given for valuable consideration and expressed to be irrevocable, or that, whether given for valuable consideration or not, it was expressed to be irrevocable for a fixed time not exceeding one year, and was acted on within that time; otherwise proof that the donor was living will be necessary: L. P. Act, 1925, ss. 126-7. As to execution by or on behalf of corporations under powers of attorney: *ib.*, s. 74.

Title to leaseholds.

When the property is leasehold, the lease and all the subsequent assignments should generally be abstracted;(*h*) but if the property is held under an ancient lease, it is sufficient to commence the abstract with the lease,(*i*) and then to take up the title at a period of thirty years from the time of the contract.(*j*) In the absence of stipulation, the purchaser is precluded by the statutory rules from calling for the lessor's title.

Enfranchised land.

In the case of land enfranchised by the L. P. Act, 1922, besides so much of the copyhold title as is required to show the title of the person in whom the land is vested by the L. P. Acts, 1922 and 1925 (see *supra*), the Minister's certificate or the compensation agreement as respects the extinguishment of manorial incidents should be abstracted.

As to Crown lands and rectories impropriate.

In an abstract of title to lands granted by the Crown, or a rectory impropriate, the original grant must precede the deduction of the modern title. The title from the original grantee to the commencement of the modern title need not be produced. As to the apportionment of charges payable for redemption of tithe rentcharge, see L. P. Act, 1925, s. 192.

As to advowsons.

The title to an advowson in England must be traced for one hundred years, and the purchaser may, apart from contract, require to be furnished with a list of the presentations which have taken place during that period, so as to show that the enjoyment has gone with the title.(*k*) But in practice a purchaser is generally satisfied with particulars of the last three presentations. The requirement of the measures passed by the Church Assembly and confirmed by Parliament, and of the Benefices Act, 1898, must be complied with: L. P. Act, 1925, s. 201. The advowsons in Wales have been extinguished under the Welsh Church Act, 1914. By the Benefices Act, 1898,

(*h*) *Re Stamford, &c., Co. and Knight* [1900], 1 Ch. 287; 69 L. J. Ch. 127.
(*i*) *Frend* v. *Buckley* (1870), 5 Q. B. 213; 39 L. J. Q. B. 90.
(*j*) L. P. Act, 1925, s. 44 (1); *Williams* v. *Spargo* [1893], W. N. 100.
(*k*) R. P. L. Act, 1833, s. 33; Sug., 14th ed., 367; Dart, 7th ed., 329; Benefices Act, 1898; see Williams' V. & P., 3rd ed., 421 to 424; also the Benefices Act, 1898 (Amendment) Measure, 1923, in L. R. (Statutes), 1924.

(Amendment) Measure, 1923, sales of advowsons have been prohibited after two presentations after the passing of that measure.

Evidence of private Act.

When a title is derived under a private Act of Parliament, such Act is sufficiently proved by a copy purporting to be printed by the King's printer or under the superintendence or authority of His Majesty's Stationery Office ;(*l*) but if the vendor has no such copy in his possession the purchaser must pay for it : L. P. Act, 1925, s. 45 (4).

Strips of land by a road.

As to open strips of land, which are next a road, the legal presumption is that they belong to the owner of the adjoining enclosed land, and not to the lord of the manor ; but the presumption may be rebutted by the circumstances, *e.g.*, where the strip communicates with open commons or other larger pieces of land.(*m*) In a case where for upwards of one hundred years the vestry of a parish had let annually the pasturage of a grass road, the rent being applied for parochial purposes, it was held that a grant to the churchwardens and overseers, as trustees for the inhabitants, might be presumed from the long usage, subject to the public right of way.(*n*)

As to life or reversionary interests in property.

On the sale of life or reversionary interests in property, the document creating the trust should be abstracted, and all the clauses therein which relate to, or can in any respect affect, the property should be fully set out : see Withers on Reversions, 4–5. If there are any other documents which relate to the interest to be acquired, they also should be abstracted, including any deeds by which new trustees have been appointed. The purchaser should ascertain the actual condition and position of the property at the time of sale by enquiring from the trustees or trust corporation whether any and what notices of dealings have taken place with the interests to be acquired : L. P. Act, 1925, ss. 137-8. The register kept by the trust corporation (if any) should be inspected : *ib.* As to life and reversionary interests in registered land, see L. R. Act, 1925, ss. 102, 144 (1) (xxiii) and rules thereunder. The provisions of the document containing the trust must be carefully examined, in order to see that there is no provision or power under which the capital of the property may be diminished or otherwise affected, and to ensure that no endorsement in lieu of notice to the trustees

(*l*) Evidence Act, 1845, s. 3. Documentary Evidence Act, 1882, s. 2.
(*m*) Dart, 7th ed., 373 ; *Plumbley* v. *Lock* [1902], 1 L. G. R. 54.
(*n*) *Haigh* v. *West* [1893], 2 Q. B. 19 ; 62 L. J. Q. B. 532.

has been made. The other instruments named in s. 137 as trust instruments should also be examined. After completion the purchaser will be entitled, like any other beneficiary, to inspect the trust deed at his own expense. A statutory acknowledgment of the right to production is therefore unnecessary, and could not be required. A tenant for life is not entitled to deliver the documents relating to the settled land to a purchaser for life interest, but the latter is given a statutory right to production and safe custody : S. L. Act, 1925, s. 111.

As to life policies.

On the purchase of life policies, the purchaser, in the absence of a stipulation to the contrary, should be furnished with proof of the correctness of the statements on which the policy was granted, and that the last premium has been paid ; and if the policy was effected on the life of any other person than that of the assurer, it will be necessary to ascertain that the assurer had at the time a pecuniary or insurable interest in the life of the assured. Enquiry must be made from the insurance company to ascertain whether they have received any notices.

Death duties.

Where a charge for death duties has attached before 1926 and the intending purchaser has notice of the facts giving rise to the charge, the usual certificate or receipt must be produced to show that these duties have been paid or are not payable : see *Re Conlon and Faulkener* [1916], 1 I. R. 241. If the purchaser has no notice of these facts, he will take the property free of duty. Where the duty attaches after 1925, a purchaser of the legal estate takes free from the charge, unless it is registered as a land charge under L. C. Act, 1925, s. 10, Class D ; L. P. Act, 1925, s. 17. " Death duties " include estate duty, succession duty, and legacy duty : L. P. Act, 1925, s. 205 (1) (iv). These provisions do not apply to registered land, as to which see L. R. Act, 1925, s. 73.

Purchaser of reversion should require death duties to be commuted.

When a reversionary estate expectant on death is the subject of sale, the purchaser should require the death duties which will become payable on the death of the tenant for life to be commuted under the statutory provisions in that behalf.(*o*)

(*o*) S. D. Act, 1853, s. 41 ; Fin. Act, 1894, ss. 12, 13. Formerly a similar requisition had to be made on a purchase of the fee simple in land from a life tenant and remainderman unless the sale was made under a power in the settlement or under the S. L. Acts so that the succession duty was shifted to the proceeds of sale : *Northumberland* v. *A.-G.* [1905], A. C. 406 ; 74 L. J. K. B. 734. Now all sales of settled land will be made by the tenant for life estate owner, the estate of the remainderman is an equitable interest and does not come on the title : L. P. Act, 1925, s. 42 (1).

Sales by tenant for life and remainderman abolished.

Estate duty on reversionary interests.

Under s. 64 of the Fin. (1909-10) Act, 1910, purchasers and mortgagees of reversionary interests who purchased or took mortgages before 30th April, 1909, are exempt from the increased death duties imposed by the Act. The same exemption is given by Fin. Act, 1914, s. 16; Fin. Act, 1919, s. 29 and Fin. Act, 1925, s. 22 to purchasers or mortgagees of reversionary interests who purchased or took mortgages before 11th May, 1914, 30th April 1919 and 28th April, 1925, respectively. Where a mortgagor is liable the charge for duty ranks after the mortgagee's security.

When land ceases to be liable to death duties against purchaser.

Independently of the protection given to purchasers for money's worth of a legal estate, the Customs, &c., Act, 1889, s. 12, and the Fin. Act, 1894, s. 8 (2), taken together, provide, in effect, that real property shall not, as against a purchaser for valuable consideration (*Re Donelan* [1902], 1 Ir. R. 109), or a mortgagee, remain charged with or be liable for payment of any sum for estate or succession duty after the expiration of six years from the date of such notice or payment as therein mentioned, or, in the absence of such notice or payment, after the expiration of twelve years from the happening of the event which gave rise to an immediate claim to such duty.

Penalty for concealing deeds, &c.

By the L. P. Act, 1925, s. 183, a vendor or mortgagor of land, or of any chattels real or personal or things in action, conveyed or assigned to a purchaser, or the solicitor or agent of any such vendor or mortgagor, who conceals any settlement, deed, will, or other instrument material to the title or any incumbrance from the purchaser or mortgagee (or falsifies any pedigree upon which the title does or may depend), in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, is guilty of a misdemeanor, and is also liable to an action for damages. Before prosecution under this section the leave of the Attorney-General, or, if that office be vacant, the Solicitor-General must be obtained and to the person intended to be prosecuted must be given notice of the application for leave to prosecute.

What inquiries vendor may refuse to answer.

Neither a vendor nor his solicitor can be required to answer any enquiry by a purchaser, concerning any equitable interest or power which can be overreached on sale, or whether the vendor or his solicitor is aware of the existence of any estate or interest not disclosed by the abstract.(*p*) This does not extend

(*p*) *Re Ford and Hill* (1879), 10 Ch. D. 365; 48 L. J. Ch. 327; *Taylor* v. *London and Co. Bk.* [1901], 2 Ch. 231, 258; 70 L. J. Ch. 477. See also L. P. Act, 1925, ss. 10, 12 and 14.

to liabilities, such as easements acquired by prescription, which would not appear on the abstract.

A solicitor incurs no liability by an omission to include in any abstract a notice of any interest which can be overreached on sale, nor by the inclusion of such an interest: L. P. Act, 1925, s. 10.

Abstract returned if sale not carried out.

The abstract is the property of the purchaser if the sale is carried out, but if the contract is abandoned or rescinded he must return it: *Roberts* v. *Wyatt* (1810), 2 Taunt. 268; see also Dart, 7th ed., 315.

Sec. II.—*The Middlesex and Yorkshire Registries and the Searches to be made therein.*

Middlesex Registry.

By the Middlesex Registry Act, 1708, as amended by the L. P. Act, 1925, s. 11, memorials of instruments operating to transfer or create a legal estate in land in the county of Middlesex (including a charge by way of legal mortgage) must be registered as therein directed and unless so registered will be void against a subsequent purchaser for value. Such instruments include deeds, probates, letters of administration, assents, vesting declarations and vesting orders. Wills are no longer within the Act, the probate is the material document as respects the legal estate.

Exemptions.

The Act does not extend to leases at a rack rent, or to any lease, not exceeding twenty-one years, where the actual possession and occupation go along with the lease, or to the City of London, or to any of the chambers in Serjeants' Inn, or to the Inns of Court or Chancery, or to any deed of arrangement, or land charge registered under Class A of s. 10 of the L. C. Act, 1925, and made on or after the 30th July, 1900; or to any other land charge or instrument, except a puisne mortgage made after 1925 and capable of being registered under that Act: L. C. Act, 1925, s. 18.

Notice of memorials registered in Middlesex and Yorkshire.

The L. P. Act, 1925, s. 197, enacts that registration in a local deeds registry of any memorial of an instrument confers actual notice of the instrument from the date of registration or other prescribed date, and continues so long as the registration is in force; but by s. 94 of the same Act a mortgagee, making further advances, may, in accordance with that section, tack such advances to the original mortgage and obtain priority

to all charges registered after the original advance was made or the register was last searched. Registration of a memorial of any instrument not required to be registered confers no priority or notice: s. 197 (2).

Construction of Acts as to appointment under power.

The following points have been decided with reference to the M. R. Act, 1708, or of similar provisions in the Y. R. Acts, viz.:—

(1) That a deed of appointment under a power must be registered.(*q*)

(2) That the memorial of an assignment of leaseholds will not, by containing a recital of the lease, cure the omission to register the lease: *Honeycomb* v. *Waldron* (1736), 2 Stra. 1064.

Assignment of legacy charged on land.

(3) That an assignment of a legacy charged on land (*Malcolm* v. *Charlesworth* (1836), 1 Keen, 63; 5 L. J. Ch. 172), or of the proceeds of land devised on trust for sale (*Arden* v. *A.* (1885), 29 Ch. D. 702; 54 L. J. Ch. 655), is an assignment of money only, so that such an assignment need not be registered. It is clear now that such assignments only relate to equitable interests.

Enfranchisement of copyholds.

(4) That an enfranchisement of copyholds must be registered: *R.* v. *Middlesex Registrar* (1888), 21 Q. B. D. 555; 57 L. J. Q. B. 577; this applies where the land was enfranchised before 1926, but it is conceived that the compensation agreement or the certificate by the Minister ought to be registered as evidence of the legal estate having passed by the Acts to the person paying the compensation.

Order in bankruptcy.

(5) That an order in bankruptcy under ss. 18 and 53 of the Bankruptcy Act, 1914, whereby the official receiver becomes the trustee in bankruptcy, need not be registered (*Re Calcott and Elvin* [1898], 2 Ch. 460; 67 L. J. Ch. 553); though under s. 19 the certificate of appointment of a trustee requires registration. This, from the point of view of a purchaser, is no longer material for either the petition will be registered as a pending action or the receivership order will be registered as an order affecting land under L. C. Act, 1925.

Probates, letters of administration and assents.

Probates, letters of administration and assents in writing to the passing of legal estates are now the material documents,

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(*q*) *Scrafton* v. *Quincey* (1752), 2 Ves. sen. 413. This could only apply now where the appointment confers a legal estate, *e.g.*, a lease under a power: L. P. Act, 1925, ss. 7, 8 and 9. In ordinary cases an appointment will only confer an equitable interest: *ib.*, s. 1. *Le Neve* v. *Le N.* (1748), 3 Atk. 646, 655; *Wyatt* v. *Barwell* (1815), 19 Ves. 435; *Tunstall* v. *Trappes, Gosling's Case* (1829), 3 Sim. 301 (notice to solicitor); *Hodgson* v. *Dean* (1825), 2 Sim. & St. 221; affirmed by L. C., July, 1825, MS.; see Sug., 14th ed., 761.

a will is only material because of the appointment of executors, a devise in a will only operates to pass an equitable interest. The assent in writing relates back to the death and will pass the legal estate to the person named : Ad. of E. Act, 1925, s. 36.

Exemptions under L. R. Act, 1925 and L. C. Acts.

The M. R. Act, 1708, does not apply to registered land, except as respects instruments relating to estates or interests not affected by the registration : L. R. Act, 1925, s. 135.

Middlesex Registry transferred to Land Registry.

Under the L. R. (Middlesex Deeds) Act, 1891, the Middlesex Registry has been transferred to H. M. Office of Land Registry.

Memorials and official certificates of search.

The First Schedule to the Act of 1891 and the Land Registry (Middlesex Deeds) Rules, 1892 and 1913,(*r*) prescribe regulations as to memorials and searches. An official search may be required, and in that case an official certificate of the result of the search will be given to the applicant. Such certificate exonerates the applicant from all loss that may arise from any error therein, and when obtained by a solicitor acting for trustees, executors, or other persons in a fiduciary position those persons are also exonerated. Forms of memorials of requisitions for search and of certificates of result of search are prescribed by the rules.

Yorkshire Registries.

Summary of Y. R. Acts.

The Yorkshire Registries Act, 1884, which came into operation on the 1st January, 1885, repeals the former Y. R. Acts. The following is a summary of its principal provisions as amended by the Y. R. Act Amendment Act, 1884, the Y. R. Amendment Act, 1885, and the L. P. Act, 1925.

Assurances to be registered.

(1) Assurances by which the legal estate in land in Yorkshire is affected, may be registered : Act of 1884, s. 4 ; L. P. Act, 1925, s. 11.

By the L. P. Act, 1925, s. 11, probates and letters of administration are treated as instruments operating to transfer the legal estate of the deceased to his personal representatives. The registration of any instrument affecting the legal title to land is actual notice of the instrument and its contents : *ib.*, s. 197. Memorials of instruments affecting equitable interests need not be registered and if registered will not affect priority or confer notice of the instrument or of its contents : *ib.*, ss. 11 and 197. As to mortgagees making further advances : *ib.*, s. 94.

A memorial of a mortgage of an interest in the proceeds of sale of land held on trust for sale is not capable of being registered :

(*r*) See 1892, W. N. Appendix of O. & R., pp. 4, 15, 21 ; 1913, W. N., Pt. 2, p. 154.

Gresham Life Assurance Society v. *Crowther* [1915], 1 Ch. 214; 84 L. J. Ch. 312. Clearly this is an equitable interest.

Mode of registration.

(2) Registration may be effected by enrolling in the register a memorial, or, at the option of the person registering, a full copy of the assurance or probate: s. 5 (*e*). This class of registration, namely, of a memorial of a document transferring or creating a legal estate, is altogether distinct from the registration of certain land charges (see *infra*) in a Yorkshire register which, by the L. C. Act, 1925, is authorised in place of registration at the Land Registry. These land charges relate to equitable interests, while a memorial relates to a legal estate.

Definition of "assurance."

(3) "Assurance" included any conveyance, enlargement of term into fee simple, memorandum of charge, deed of consent to the discharge of a trustee, statutory receipt, private Act of Parliament, award or order of the Land Commissioners (now the Minister of Agriculture and Fisheries), order of a court, certificate of appointment of trustee in bankruptcy, or affidavit of vesting under any Act of Parliament.(*s*) But this definition must now be confined to instruments transferring or creating legal estates.

Caveats may be registered

(4) A caveat may be registered by any person claiming an interest in land, to be in force for the period specified therein; and if within that period a conveyance is executed and registered in favour of the person registering the caveat, it will be deemed to have been registered on the day on which the caveat was registered: Act of 1885, s. 3.

Assurances of legal estates to rank according to date of registration.

Probate according to date of death, if registered within six months; if not, according to date of registration.

Priority not affected by notice.

(5) Every assurance entitled to be registered (that is, an assurance transferring or creating a legal estate) is to have priority according to the date of registration, and every probate according to the date of the testator's death if the date of registration of probate is within six months after the death, but if not, then according to the date of registration. This priority is to have full effect, except in cases of actual fraud, and no person claiming under a registered instrument is to lose priority merely in consequence of his having been affected with actual or constructive notice, except in cases of actual fraud. But this provision is not to confer on a person claiming without valuable consideration any further priority than would belong to the person under whom he claims.(*t*) These provisions take effect

(*s*) Act of 1884, s. 3. An agreement for sale is not an assurance within the definition in the Act: *Rodger* v *Harrison* [1893], 1 Q. B. 161; 62 L. J. Q. B. 213.

(*t*) Act of 1884, s. 14; 52 Sol. J. 168, 189. Registration was no protection against a document or unwritten equity not entitled to or capable of being

subject to L. P. Act, 1925, ss. 94 (tacking and further advances), 97 (priorities between puisne mortgagees).

Notice of Will may be registered in certain cases, and the probate registered afterwards.

(6) If an executor cannot register the probate within six months after the testator's death, he may register notice of the Will, and in that case, if the probate is duly registered within two years after the death of the testator, it will have priority as though it had been registered upon the date on which the notice was registered, and such last-mentioned date is for all purposes to be deemed to be the date of the registration of the probate: Act of 1884, s. 11.

Probates and assents are material.

Probate is evidence of the executor's title, which relates back to the death, his legal title depends on his appointment as executor, not on any devise, for a devise only passes an equitable interest. It is because his title depends on his appointment that L. P. Act, 1925, s. 11 (2), provides that the probate shall be treated as an instrument capable of passing a legal estate to an executor. An assent in writing, when given, will pass the legal estate to the person named, and relates back to the death: Ad. of E. Act, 1925, s. 36. The assent operates as a conveyance (*ib.*), hence should be registered. A person, not being the executor, beneficially interested under a Will, is no longer concerned to register the Will itself.

Position of heir of lunatic.

(7) Even an heir-at-law of a lunatic, taking under Ad. of E. Act, 1925, s. 51 (2), only acquires an equitable interest. The legal estate will pass to the administrator when constituted. The title of the heir to the legal estate will depend on the assent in writing which, when given, will relate back to the death: *ib.*, s. 36. Thus the letters of administration and the assent should be registered. The heir can protect himself by registering a pending action against the administrator, unless the heir is granted administration.

Memorandum of lien for unpaid purchase-money and charge by deposit of deeds, no longer to be registered.

(8) Formerly a lien for unpaid purchase-money, or a charge by deposit of title deeds, had no priority against a subsequently registered assurance for valuable consideration, unless and until a memorandum thereof was registered: s. 7. Now, as both the lien and the deposit only create equitable interests, memorials

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registered, of which the purchaser had notice; see *White* v. *Neaylon* (1886), 11 A. C. 171; 55 L. J. P. C. 25; *Battison* v. *Hobson* [1896], 2 Ch. 403; 65 L. J. Ch. 695. An assignment for the benefit of creditors only passed such interest as the bankrupt had in his property, hence took effect subject to equitable incumbrances executed before but registered after the assignment: *Jones* v. *Barker* [1909], 1 Ch. 321; 78 L. J. Ch. 167. If a legal estate is conveyed, then different considerations may arise.

Assignment for benefit of creditors.

thereof cannot be registered, but these equitable interests should be protected by registration as land charges, either in the local registry or in the Land Registry under L. C. Act, 1925, s. 10.

Official searches.

(9) Provision is made for official searches, and a record of the result of every such search is to be preserved at the office. The registrar is to give a certificate of such result to any person requiring the same, and every such certificate is to be receivable in evidence: ss. 20–21.

Searches may be made and copies taken by any person.

(10) Any person is authorised on application to inspect and search the register and any other books and indices which may be required to be kept at the registry office under the Act or any rules made thereunder, and to take copies thereof or extracts therefrom: s. 19.

Protection of solicitors, trustees, &c., in the case of certificates, &c.

(11) Where any solicitor, trustee, executor, agent, or other person in a fiduciary position, either by himself or by a solicitor, obtains a certificate of the result of an official search, or a certified copy of any document enrolled in the register, or of any entry therein or any book or index kept at the office, he is not to be answerable for any loss, damage, or injury arising from any error therein: s. 23.

Protection by tacking abolished save for purposes of further advances.

(12) Formerly in any case in which priority or protection might, but for the Act, have been given or allowed to any estate in land, by reason of such estate being protected by or tacked to any legal or other estate, no such priority or protection was so given or allowed, and full effect was given to this provision though the party claiming such priority or protection was a purchaser for valuable consideration without notice: s. 16. Now all tacking has been abolished, save for the purpose of giving priority to further advances made in accordance and in compliance with the provisions of L. P. Act, 1925, s. 94.

Exemptions.

(13) The Act does not apply to any lease not exceeding twenty-one years, or any assignment thereof where accompanied by actual possession from the making of such lease or assignment (s. 28), or to land registered under the L. R. Act, 1925, except estates and interests not covered by the registration: L. R. Act, 1925, s. 135.

Rules under the Yorkshire Registries Act.

The practice as to registration and enrolment of instruments, and as to searches for registered or enrolled instruments, under this Act is regulated by rules passed by the Justices of the Peace for the several Ridings at Quarter Sessions.(*u*)

(*u*) See the North Riding of Yorkshire Registry Rules, 1885. Those passed for the East and West Ridings are identical, *mutatis mutandis*. These will no doubt be amended before 1926.

Power to transfer Yorkshire Registries to Land Registry.

The L. R. Act, 1925, s. 136, gives power for the Lord Chancellor by arrangement to transfer any of the Yorkshire registries to the Land Registry in London. The principles governing this arrangement will be those contained in ss. 1, 3, 4 of the Land Registry (Middlesex Deeds) Act, 1891.

Registration of certain land charges in a Yorkshire register.

In the case of a general equitable charge, restrictive covenant, equitable easement or estate contract affecting land within the jurisdiction of the local deeds register in Yorkshire, a land charge can be registered there, and such registration has the same effect as if the land charge had been registered in London : L. C. Act, 1925, s. 10 (6). There is, however, nothing to prevent registration in London in place of Yorkshire, for the right in question might also affect land outside the jurisdiction of the Riding registry.

Extent of a Yorkshire Search.

Land charges of other classes, as well as pending actions, writs, orders and deeds of arrangement, remain to be registered in London. Hence a Yorkshire search will not cover the whole ground, but, assuming that it becomes the practice to register land charges, whenever practicable, in the local register, it will take in all the items formerly registered in a Yorkshire register,

Mortgages by deposit.

save mortgages by deposit of documents. These no longer have to be registered in any way, for the deposit of the documents gives ample security, while any intending purchaser will immediately be put on his guard if the documents cannot be produced from the proper quarter : L. P. Act, 1925, ss. 13 and 94. The general result, however, is that a purchaser of land in Yorkshire will not be safe unless he obtains a certificate of search in London as well as in the local register. As to registered land, see L. R. Act, 1925, ss. 66, 144 (1) (xi). In this case a note is placed on the register to prevent the grant of a new certificate.

As to Middlesex and Yorkshire Registries.

A purchaser of land in Middlesex or Yorkshire (not being land registered under the L. R. Act, 1925), should require an official search to be made in the local registry in the names of all persons whose interest in the property, as disclosed by the abstract, is or has been such that a registered assurance by him would prejudicially affect the present title, and in strictness the search should extend over the whole period covered by the abstract.(*v*)

For what period.

Search sometimes impracticable.

(*v*) Sometimes the entries against one name are so numerous as to make a search impracticable without incurring a very heavy expense, and in such a case the solicitor should obtain either an official certificate of search or an

The search will be against each successive owner from the date of the conveyance to him to the date of the registration of the instrument by which he parted with his interest. It should be continued against a testator or intestate after his death, and against his representative (or before 1898 devisee or heir) to the date of the registration of the conveyance by one of them. A search need not be made against a mortgagor after the date of the mortgage deed, if the mortgagee is selling under his power of sale. Searches may sometimes be necessary for vesting declarations, express or implied, against persons having a power to appoint new trustees : T. Act, 1925, s. 40 (5). If on a search any document affecting the property is found which is not abstracted, an abstract of it should be called for, unless it is clear that it can only relate to an equitable interest which must be overreached.

A mortgagee making a further advance should not search.

A mortgagee, making a further advance, under a mortgage made for that purpose should not as a rule search the register, or he might obtain notice of a subsequent encumbrance ; he would then, apart from an obligation, refuse to make any further advance to the mortgagor : L. P. Act, 1925, s. 94.

Search to extend to land charges.

The search or requisition for an official search should, as respects Yorkshire, extend to land charges capable of being registered under L. C. Act, 1925, s. 10 (6).

Right of purchaser to require registration of memorials.

The purchaser should also see that all documents requiring registration have been duly registered. If it appears that a memorial of any document has not been registered, he must determine whether, having regard to the subsequent dealings with the property, the want of registration prejudicially affects his title. If it does, he should require the vendor to register it at his own expense. A purchaser must pay for the registration of a memorial of his own conveyance.

Sec. III.—Judgments, Crown Debts, Lis pendens, Annuities, Deeds of Arrangement, and Land Charges, as affecting Land, and the Searches to be made in respect of them, and other Searches and Enquiries.

The old Law as to Judgments.

Remedy by *elegit* first granted by 13 Edw. 1, c. 18.

The remedy of the judgment creditor against his debtor's lands has its origin in the Statute of Westminster the Second. That Act enabled him to elect either to have a writ of *fieri facias*

authority from his client to forgo a search. In practice these searches are seldom made further back than the last purchase for value. The extent of the search is a matter to be considered in each case.

against the debtor's goods or that the sheriff should deliver to him " all the chattels of the debtor (saving only his oxen and beasts of the plough)(*w*) and the one-half (*x*) of his lands, until the debt be levied upon a reasonable price and extent." Hence the writ was, and still is, called a writ of *elegit*. Resort is seldom had to a writ of *elegit* at the present day, for other remedies are available : L. P. Act, 1925, ss. 195 and 90.

What could be taken by *elegit* under the old law.

The term " lands " in the statute included rentcharges, impropriate rectories and tithes,(*y*) and land in reversion expectant on a lease reserving a rent.(*z*) Copyholds (*Heydon's Case* (1584), 3 Co. Rep. 7a), however, could not be extended, nor an advowson in gross,(*a*) nor an estate tail, so as to affect the issue : *Ashburnham* v. *St. John* (1605), Cro. Jac. 85.

From what time judgment operates as a lien on lands.

A judgment was a general lien on the debtor's extendible freehold lands from the date of its being entered up, but chattels real were only bound from the time when the writ of execution was lodged with the sheriff. If the debtor had a general power of appointment over land, and also an estate in the same land until appointment, the lien of the judgment upon the estate was liable to be defeated by a subsequent exercise of the power (*Doe* v. *Jones* (1830), 10 B. & C. 459; 8 L. J. (O.S.) K. B. 214); even though the appointee had notice of the judgment : *Eaton* v. *Sanxter* (1834), 6 Sim. 517 ; 3 L. J. Ch. 197.

Lien could be defeated by appointment under power.

Right of execution extended by Statute of Frauds to land vested in a trustee.

Under s. 10 of the Statute of Frauds, execution might be had of land vested in a trustee for the debtor, provided that the trustee remained seised at the time of execution sued ; but this section only applied where the trustee held the fee simple in trust for the debtor. It did not extend to an equity of redemption (*Burden* v. *Kennedy* (1757), 3 Atk. 739), or any equitable interest short of the absolute beneficial ownership : *Harris* v. *Booker* (1827), 4 Bing. 96 ; 5 L. J. (O.S.) C. P. 92. As regards equitable interests of this kind, the remedy of the creditor was to take proceedings in the Court of Chancery to have the legal impediment removed, *e.g.*, in the case of an equity of redemption, by redeeming the mortgage, and to obtain in the meantime, by the appointment of a receiver, the same benefit which he would have had at law under an *elegit*, if the legal impediment had not existed.

Equity of redemption, &c., could be reached through Court of Chancery by appointment of receiver.

(*w*) The words " all," &c., to " plough " are repealed by the Bkcy. Act, 1883, s. 169, 5th Sch. See also s. 146 (not repealed by the Bkcy. Act, 1914, 6th Sch.), which expressly provides that a writ of *elegit* shall not extend to goods.

(*x*) Extended to the whole of the land by the Judgments Act, 1838, s. 11.

(*y*) Co. Lit. 159. (*z*) 1 Roll. Ab. 894. (*a*) 3 Bac. Ab. 382.

But it was necessary under the old law that the creditor should, before filing this bill, sue out an *elegit*: *Neate* v. *Marlborough* (1838), 3 My. & C. 407.

The Act of 1838 *and subsequent Acts as to Judgments.*

By the Judgments Act, 1838, s. 11, as modified by the Acts of 1839 and 1840, the remedy by *elegit* was extended to "all such lands, tenements, rectories, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) as the person against whom execution is so sued, or any person in trust for him, shall have been seised or possessed of at the time of entering up the said judgment, or at any time afterwards, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit." And by s. 13 (repealed by L. P. Act, 1925, 7th Sch.) a judgment was made a charge on "all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) of or to which such person shall at the time of entering up such judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder, or expectancy, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power, which he might, without the assent of any other person, exercise for his own benefit," and the judgment was declared to be binding as against the debtor and all persons claiming under him, and also against the issue of his body, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion, or other interest.(*b*) But a judgment creditor is not entitled to proceed in equity to obtain the benefit of the charge until after the expiration of a year from the time of entering up the judgment. The effect of s. 13 is reproduced by L. P. Act, 1925, s. 195.

1 & 2 Vict. c. 110. Remedy by *elegit* extended to entirety of lands, &c.

Judgment an equitable charge.

Effect of Land Charges Act on Judgments.

Under the L. C. Act, 1925, s. 6—

(1) Every writ or order affecting land issued or made by any court for the purpose of enforcing any judgment, statute, or

Writs of execution to be registered at Land Registry.

(*b*) See *Re Anthony* [1893], 3 Ch. 498; 62 L. J. Ch. 1004, as to the effect of the death of a tenant in tail in possession of copyholds whose land had

Copyhold estate tail.

recognizance (whether obtained on behalf of the Crown or otherwise) or for the purpose of enforcing any inquisition finding a debt due to the Crown or any obligation or specialty made to the Crown;

(2) any order appointing a receiver or sequestrator of land;

(3) any receiving order in bankruptcy made after 1925, whether or not it is known to affect land

may be registered in the Land Registry in the name of the estate owner whose land is affected. The registration ceases to have effect at the end of five years, but may be renewed from time to time, and if renewed will have effect for five years from the date of the renewal.

Registration renewed every five years.

Writ, unless registered, void against purchaser for value.

And s. 7 provides that (except as respects a receiving order in bankruptcy) every such writ and order, and every delivery in execution or other proceeding taken in pursuance of any such writ or order, shall be void against a purchaser for value unless and until the writ or order is registered under the Act.

Want of registration (s. 7) will not, however, affect the validity of a receiving order, save as against a purchaser of the legal estate in good faith for money's worth, without notice of an available act of bankruptcy. The title of a trustee in bankruptcy acquired after 1925 is void as against a purchaser of legal estate in good faith for money's worth, without notice of an available act of bankruptcy, claiming under a conveyance made after the date of registration of the petition in bankruptcy as a pending action unless, at the date of the conveyance, either the registration of the pending action is in force or the receiving order is registered pursuant to Part III of the L. C. Act, 1925.

Title of trustee in bankruptcy.

Judgments operate as an equitable charge, but not until registered.

By the L. P. Act, 1925, s. 195, a judgment, which includes any decree, order or rule having the effect of a judgment, when entered up in the Supreme Court and registered, has the effect of an equitable charge, delivered in writing, but until registration it has no effect as a charge; registration of the charge will have no effect against the trustee in bankruptcy of the judgment debtor unless the judgment was entered up at least one year before the bankruptcy.

This section does not reproduce the old law as to an *elegit*, but a writ of *elegit* must, of course, be registered, and the section (see sub-s. 4) shows when the term acquired commences.

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before his death been delivered in execution under a writ of *elegit*, in the belief that he was seised in fee simple.

By the R. P. Lim. Act, 1874, s. 8, the right to recover any sum of money secured by a judgment, &c., is barred at the end of twelve years next after a present right to receive the same (see *Re Pardoe* [1906], 2 Ch. 340; 75 L. J. Ch. 748) has accrued to some person capable of giving a discharge for the same, unless in the meantime there has been part payment of principal or interest or an acknowledgment of the right thereto given in writing signed by the person by whom the same is payable or his agent. This enactment extends to judgments generally, and is not restricted to those which operate as charges upon land.(*c*)

37 & 38 Vict. c. 57. Right to recover judgment debt, when barred.

Legal execution by Elegit.

The present state of the law, as the result of the legislation above referred to and of judicial decision, will now be summarised.

Summary of present law.

Judgments (which term in this case includes all judgments, decrees, and rules or orders of courts of law or equity whereby any sum of money or any costs, charges, or expenses are made payable to any person (Judg. Act, 1838, s. 18) are enforceable against the debtor's lands, or such of them as are of an extendible nature, by means of a writ of *elegit* Once this writ has been issued no other process can be issued in respect of the same debt on the same judgment: *Crawley* v. *Lidgeat* (1614), Cro. Jac. 338. Two or more writs may be issued simultaneously, but not in the same county. After one writ is delivered another may be issued, on the ground, to be stated in the second writ, that the debtor has other lands than those already seised: R. S. C., Order 42, r. 17; Annual Practice, 1925, p. 723.

Judgments enforceable against land by *elegit*.

The process of execution on a writ of *elegit*, when executed on freeholds is as follows: The writ is placed in the hands of the sheriff of the county, who thereupon holds an inquisition before a jury to inquire what the lands are, and, having ascertained this, he makes a return to the writ stating that he has delivered the lands (specifying them) to the creditor, and the inquisition and writ are then filed in the Land Registry. Upon delivery of possession of the land the creditor has only a right of entry and must bring an action for possession if he is not permitted to enter peaceably, or sue for the rent if the land delivered is in

Process on an *elegit* when executed on freeholds.

Creditor's rights under an *elegit*.

(*c*) *Hebblethwaite* v. *Peever* [1892], 1 Q. B. 124; *Jay* v. *Johnstone* [1893], 1 Q. B. 25, 189; 62 L. J. Q. B. 128; *Taylor* v. *Hollard* [1902], 1 K. B. 676; 71 L. J. K. B. 278.

reversion.(*d*) Tenancy by *elegit* creates a chattel interest,(*e*) conferring a legal estate in the debtor's land, but only until the debt, with taxed costs and interest on both, is paid. All mortgage terms cease when the debt is discharged: L. P. Act, 1925, s. 116. The land is delivered to the creditor at an appraised annual value, and the period at which the term begins to run is fixed: L. P. Act, 1925, s. 195 (4). Thus, it can always be ascertained for how long the term will continue; it follows that it is a term of years absolute within s. 205 (1) (xxvii) of the L. P. Act, 1925. At the end of this period the debtor is entitled to resume possession of his land, whether the whole debt has actually been paid or not,(*f*) but where money is still due to the creditor the court can extend the term under the writ: *Palmer* v. *Bolls*, 1626, Toth. 82.

Creditor's estate under an *elegit* is a term of years absolute.

What property may be taken on an *elegit*.(*g*)

Every legal estate in land in possession or reversion, if vested in the debtor beneficially, is extendible at law. So also are impropriate rectories and tithe rentcharges, but not a rectory or tithe rentcharge constituting an ecclesiastical benefice or glebe, which are only extendible by a writ of sequestration,(*h*) nor an advowson in gross, nor an estate in remainder: *Re South* (1874), 9 Ch. 369; 43 L. J. Ch. 441. Where the legal estate of the debtor is subject to any equity, the judgment creditor will take subject to that equity; in other words, he will take whatever beneficial interest the debtor has, and no more.(*i*)

Voluntary settlement.

A voluntary settlement by a debtor is not avoided by a subsequent judgment:(*j*) Edwards on Execution, p. 179.

Liability of execution creditor to account.

The execution creditor, while in possession, must account as a mortgagee in possession, and the debtor may at any time ask for such account to be taken; if it is then found that no more money is owed to the creditor the debtor is entitled to resume possession of his land.(*k*) When the debt is paid off the term ceases: L. P. Act, 1925, s. 116.

Cesser of term.

(*d*) *Hatton* v. *Haywood*, 1874, 9 Ch. at p. 236; as to the effect of an *elegit* against a lessee for years who has sub-demised by way of mortgage, see *Johns* v. *Pink* [1900], 1 Ch. 296; 69 L. J. Ch. 98.

(*e*) 2 Bl. Comm., ed. 1766, p. 161.

(*f*) Edwards on Execution, p. 184.

(*g*) See Carson, 2nd ed., 488-90, where all the recent cases are collected.

(*h*) *Hawkins* v. *Gathercole* (1855), 6 D. M. & G. 1; 24 L. J. Ch. 332; *Bates* v. *Brothers* (1854), 2 Sm. & G. 509; 23 L. J. Ch. 782.

(*i*) *Whitworth* v. *Gaugain* (1846), 1 Ph. 728; 15 L. J. Ch. 433; *Kinderley* v. *Jervis* (1856), 22 Beav. 1; 25 L. J. Ch. 538.

(*j*) *Beavan* v. *Oxford* (1856), 6 D. M. & G. 507; 25 L. J. Ch. 299. See now L. P. Act, 1925, s. 173.

(*k*) Edwards on Execution, p. 185, *et seq.*

Powers of appointment; bare legal estate outstanding.

Formerly where a debtor had power to dispose of the land for his own benefit, or where the legal estate was vested in a trustee solely for the benefit of the debtor it could have been extended under a writ of *elegit*.

Writs of *elegit* confined to "legal estates."

Now, however, that legal estates are confined to absolute fees simple in possession (whether or not subject to a lease) and terms of years absolute, it seems clear that legal execution can only apply to "legal estates," defined in s. 1 of the L. P. Act, 1925. Moreover as under sub-s. 7 of that section a power of disposition will only take effect in equity, the existence of such a power will not enable the land to be extended.

It will seldom happen that a legal estate will be left outstanding in a bare trustee, but if it is, the proper course, unless it is otherwise got in, would, it seems, be to apply to the court to make a vesting order under L. P. Act, 1925, s. 3 (5), before the writ is taken out. Whether the court would make an order directing the debtor to make an appointment in his own favour and then direct the estate owner to convey to the debtor is a matter to be considered in each case.

Estate tail.

An estate tail could be seized, but the rights of the creditor were only good against the issue of the debtor, and not against the remaindermen, until the estate tail was barred: *Re Anthony* [1893], 3 Ch. 498.; 62 L. J. Ch. 1004. After 1925 a tenant in tail in possession is entitled to have the legal estate in the settled land vested in him (S. L. Act, 1925, ss. 20, 106); but entailed interests can only take effect as equitable interests: L. P. Act, 1925, s. 130.

A tenant by *elegit* may assign his term. The writ does not confer any power of sale, and as he has a legal term s. 90 of the L. P. Act, 1925, does not apply.

Powers of a tenant by *elegit*.

Whether s. 91 applies for all purposes may perhaps be doubtful, but in any case he can obtain an order for sale under the Judg. Act, 1864, s. 4 (which order should be registered), and then a vesting order or order appointing a person to convey, can be made under T. Act, 1925, ss. 44, 47, 50; see also L. P. Act, 1925, s. 9.

Having regard to the wide definitions of "mortgage" and "mortgage money" (s. 205 (1) (xvi)), it is conceived that a tenant by *elegit* as a "person interested in" the mortgage money could, independently of any other enactment, obtain an order for sale under s. 91.

At any rate the debtor is a mortgagor within that Act and could apply for a sale under s. 91.

Leaseholds when extended.

The sheriff may either deliver leaseholds to the creditor for part of the term (there must now be a nominal reversion left in the debtor: L. P. Act, 1925, s. 86), or he may sell them to him at a price fixed by the jury, in which case the creditor will become an absolute owner and will not be liable to account.(*l*)

Position of other judgment creditors, where execution has been obtained by one.

Where there are two judgment creditors, A. and B., and A. takes the land in execution, B.'s position seems to be as follows: he may, as heretofore, take a transfer under L. P. Act, 1925, s. 95, or take proceedings in equity to remove the impediment caused by A.'s *elegit*, *e.g.*, by redeeming him: *Re Cowbridge Ry. Co.* (1868), 5 Eq. 413; 37 L. J. Ch. 306. If A., before being redeemed, obtains an order of sale, B. will be entitled to share in the surplus proceeds of the sale after A.'s claim is satisfied.

Execution after contract of sale.

If land was delivered in execution, and the writ or order was duly registered, after the debtor had contracted to sell it, but before the purchase was completed, the judgment creditor took subject to the contract; but he was entitled to be paid out of the purchase-money, and the purchaser could not safely pay the money to the vendor: *Thornton* v. *Finch* (1864), 4 Giff. 515; 34 L. J. Ch. 466. If however the contract being an "estate contract" is made after 1925 and the purchaser does not register a land charge to protect it before the judgment creditor acquires the legal term, the contract would be void as against a purchaser for value: L. C. Act, 1925, ss. 10, Class C. (iv), 13 (2).

Equitable Execution.

Appointment of receiver.

When the debtor's interest consists of an equitable interest, not extendible at law but which, had it been a legal estate, would have been so extendible, the court will at the suit of the creditor, appoint a receiver. The order appointing a receiver gives the creditor a remedy analogous to that of a legal execution, hence is commonly, though somewhat incorrectly, called "equitable execution."(*m*)

A receiver may be appointed in the original action and in whatever branch of the court it may have been instituted: *Smith* v. *Cowell* (1880), 6 Q. B. D. 75; 50 L. J. Q. B. 38; nor is it necessary to sue out a writ of *elegit* first, as was formerly the rule: *Ex p. Evans* (1879), 13 Ch. D. 252; 49 L. J. Bk. 7.

(*l*) Edwards on Execution, 186.

(*m*) *Atkins* v. *Shephard* (1889), 43 Ch. D. 131; 59 L. J. Ch. 83; *Cadogan* v. *Lyric Theatre* [1894], 3 Ch. 338; 63 L. J. Ch. 775.

But the Judicature Act does not give jurisdiction to appoint a receiver by way of "equitable execution" in cases where, before that Act, no court had such jurisdiction.(*n*)

Equitable charge under all judgments.

Under s. 195 of the L. P. Act, 1925, a judgment of the supreme court, whenever obtained, creates a charge on the debtor's interests in land therein defined, when (and not before) a writ or order for the purpose of enforcing it is registered under L. C. Act, 1925, s. 6.

Re-registration.

Registration of a writ or order ceases to have effect at the expiration of five years, but may be renewed from time to time, and, if renewed, has effect for five years from the date of the renewal: L. C. Act, 1925, s. 6.

Equitable Charges (under Judgments).

Equitable charges in right of judgment debts.

Section 195 of the L. P. Act, 1925, consolidates the existing law in regard to equitable charges on all interests in land, whether legal or equitable. In view of the wide powers for enforcing these charges conferred by s. 90 on the court, under which the charge can be converted into a legal mortgage with power, it seems, for the mortgagee to realise the security out of court, and to the fact that s. 195 applies not only to interests in land which can be extended, but also to those which cannot be affected by an *elegit*, it is conceived that proceedings will in the main be based on the jurisdiction given by this section. It seems that the difficulty in dealing with an estate in remainder was removed by the repeal of s. 1 of the Judg. Act, 1864, by the L. C. Act, 1900.(*o*) The effect is to assimilate, so far as possible, the rights of creditors under legal and equitable execution respectively.

In the case of remainders and other property only subject to equitable execution the rights of the judgment creditor commence at the date of entering up the judgment or on the acquisition of the equitable interest, provided in the latter case the interest was acquired while the debtor's estate was subject to the judgment, and in both cases that the judgment was registered under the L. C. Act, 1925, s. 6; see also the judgment in *Lord Ashburton* v. *Nocton* [1915], 1 Ch. 274; 84 L. J. Ch. 193.

(*n*) *Harris* v. *Beauchamp Brothers* [1894], 1 Q. B. 801; 63 L. J. Q. B. 480; see also *Thompson* v. *Gill* [1903], 1 K. B. 760, 766; 72 L. J. K. B. 411; *Edwards & Co.* v. *Picard* [1909], 2 K. B. 903; 78 L. J. K. B. 1108; *Morgan* v. *Hart* [1914], 2 K. B. 183; 83 L. J. K. B. 782.

(*o*) Per Lindley, L.J., in *Harrison* v. *Bottomley* [1899], 1 Ch. 465; 68 L. J. Ch. 208; *Ashburton* v. *Nocton* [1915], 1 Ch. at p. 281; 84 L. J. Ch. 193; Edwards on Execution, 183.

Crown Debts.

Crown debts upon record or by specialty enforceable by extent against freehold and leasehold property.

Debts due to the Crown upon record or by specialty (33 Hen. 8, c. 39 s. 36) may be enforced by a writ of extent against all freehold property belonging to the debtor at the time when the debt becomes one of record or the specialty debt is contracted, or at any time afterwards, including equitable interests, rents, and impropriate tithes. If the debtor died before an extent was issued, the lands might be taken in the hands of his heir or issue in tail (33 Hen. 8, c. 39, s. 52; *Anderson's Case* (1597), 7 Co. Rep. 21 a), the writ in that case being called a writ of *diem clausit extremum*. Chattels real are only extendible by Crown process from the *teste* of the extent.

Crown debts cannot be defeated by execution of power.

Crown debts cannot be defeated by the execution of a power: *Ellis* v. *R.* (1850), 6 Exch. 921; 20 L. J. Ex. 348; but the Crown is bound by all interests actually created before the lien of the Crown has attached; this includes an equitable mortgage by deposit of the title deeds: *Casberd* v. *A.-G.* (1819), 6 Price, 411.

Simple contract debt to Crown.

A simple contract debt to the Crown does not charge the debtor's land, until it becomes one of record.

Crown judgments now on same footing as others.

By the L. C. Act, 1925, s. 6, a Crown debt or judgment, whenever dated, is placed on the same footing as other judgments, and must be registered at the Land Registry. Until registered it does not become a charge on the land.

Crown debts in relation to the administration of the estates of deceased persons.

A debt to the Crown had priority in the administration of assets over other debts, but at one time not over those of a higher degree; where the assets were more than sufficient to pay a simple contract debt to the Crown, it was held that the assets ought to be apportioned between the specialty and simple contract debts, and the Crown debt taken only out of the amount apportioned to the latter: *Re Bentinck* [1897], 1 Ch. 673; 66 L. J. Ch. 359. This seems to have been incorrect.(*p*)

Now under the Ad. of E. Act, 1925, 1st Sch., Pt. I, after discharging the funeral, testamentary and administration expenses, the assets have to be administered "as to the priority of debts and liabilities" according to the rules in force for the time being under the bankruptcy law (see Bankruptcy Act, 1914, s. 130), hence the Crown loses priority. The Act binds the Crown as respects the estates of persons dying after 1925: s. 58; see also s. 54.

(*p*) *Re Samson* [1906], 2 Ch. 584; 76 L. J. Ch. 21; no apportionment of assets is required between the specialty and simple creditors.

Registration of Pending Actions.

Pending action what it is.

A person who purchases land during the pendency of an action relating to the subject of his purchase is bound by the order that may be made against the person through whom he derives title, whether he has notice of the pending proceedings or not (*Bp. of Winchester* v. *Paine* (1805), 11 Ves. 194); in other words, neither party to a litigation can alienate the property in dispute so as to affect his opponent. The doctrine of pending actions is founded, not upon any peculiar principles of a court of equity as to implied or constructive notice, but is common to courts both of law and equity, and rests upon this foundation, that it would be impossible that any proceedings could be brought to a successful termination if dispositions pending the action were permitted to prevail.

Action must be pending.

With regard to the application of the doctrine—

(1) The action must be *pending*, for there is no such doctrine as that an order of court is to be deemed implied notice to a purchaser after the action is ended.

Purchaser only bound by rights affecting the estate itself.

(2) The purchaser is only bound by rights ascertained in the action affecting the estate itself which he purchases.(*q*)

Registration of petition in bankruptcy as a pending action.

A petition in bankruptcy may be registered as a pending action if it is filed after 1925. Where such a petition is filed against a firm the application to register it as a pending action must state the names and addresses of the partners and registration will be effective against each partner as well as the firm: L. C. Act, 1925, s. 2. And see Registration of Business Names Act, 1916. The omission to register will enable the rights of the trustee to be overreached by a purchaser of a legal estate in good faith, for money's worth, without notice of an available act of bankruptcy, unless the receiving order has been registered: L. C. Act, 1925, s. 3 (1). Where a legal estate is transferred or created after 1925, a petition in bankruptcy filed after 1925, is not notice of bankruptcy or of any act mentioned in the petition unless it is registered as a pending action. The title of a trustee in bankruptcy acquired after 1925 is void as against a purchaser of the legal estate in good faith, for money's worth, without notice of an available act of bankruptcy, claiming under a conveyance made after the date of registration of the petition in bankruptcy as a pending action, unless, at the date of conveyance, either the

(*q*) *Kinsman* v. *K.* (1831), 1 Russ. & M. 617; *Bellamy* v. *Sabine* (1857), 1 De G. & J. 566; 26 L. J. Ch. 797.

registration of the petition is in force or the receiving order is registered under Part III of the Act: L. C. Act, 1925, s. 3 (2), (3).

How far administration decree affects executor's powers.

If an action is commenced for the administration of the estate of a deceased person, the executor can sell and make a good title to leasehold property, and, where the testator has died since 1897, to freehold land also, at any time before judgment; nor will a judgment prevent his selling unless a sale by the court is ordered, or a receiver appointed or an injunction granted to restrain him.(*r*)

Effect of order for execution of trusts.

If an action is commenced for the execution of the trusts of a deed or Will, the trustees can act in the exercise of their powers up to the time of the order, but must afterwards act under the direction of the court.(*s*)

Powers of tenant for life under S. L. Act not affected.

An order for the execution of the trusts of a settlement does not prevent a tenant for life from exercising the power of sale or other powers conferred on him by the S. L. Act, 1925.(*t*)

Pending action not incumbrance.

A pending action is not necessarily an incumbrance. If the claim in respect of which the action is commenced is unsustainable, a purchaser cannot refuse to complete on account of the claim: *Bull* v. *Hutchens* (1863), 32 Beav. 615.

Notice of pending action.

Pending action must be registered.

The L. C. Act, 1925, s. 3, provides that no pending action shall bind a purchaser (including a mortgagee) without express notice thereof, unless and until registered and re-registered in manner therein provided. Amongst other things this entry should contain the name and title, trade, or profession of the person whose estate is intended to be affected, but if the surname of this person is entered in full, his initials will be a sufficient entry for his christian names; where he has no title, trade, or profession, it is not necessary to state this on the memorandum: *Dunn* v. *Chapman* [1920], 2 Ch. 474; 89 L. J. Ch. 385. The re-registration must be every five years.

Definition of "pending action."

By s. 2 (1) of the L. C. Act, 1925, a pending action is defined as "Any action, information or proceeding pending in court relating to land or any interest in or charge on land, and a petition in bankruptcy filed after the commencement of this Act."

(*r*) *Price* v. *P.* (1887), 35 Ch. D. 297, 304; 56 L. J. Ch. 530; Ad. of E. Act, 1925, s. 37.

(*s*) *Cafe* v. *Bent* (1843), 3 Hare, 245; 13 L. J. Ch. 169; *Walker* v. *Smalwood* (1768), Amb. 676.

(*t*) *Cardigan* v. *Curzon-Howe* (1885), 30 Ch. D. 531; 55 L. J. Ch. 71; *Hampden* v. *Earl of Buckinghamshire* [1893], 2 Ch. 531; 62 L. J. Ch. 643.

It had been held that the doctrine of a pending action did not apply to personal property other than chattel interests in land : *Wigram* v. *Buckley* [1894], 3 Ch. 483 ; 63 L. J. Ch. 689.

Annuities.

Registration of annuities.

After 1925 no " annuity " may be entered (see L. C. Act, 1925, s. 4) in the register of annuities. Where before 1926 an " annuity " has been so entered the entry may remain until satisfaction is entered or the annuity is discharged in the manner prescribed in this section. After 1925 it may be registered as a land charge under L. C. Act, 1925, s. 10, Class E. When all the annuities registered before 1925 in the annuities register have been satisfied or discharged this register will be closed. "Annuity" is defined in s. 4 (5); it does not include an annuity created after 1925.

An annuity created after 1925 which would, if created before 1926, come within the definition of " annuity," will thenceforth be treated as a " general equitable charge," and can be registered as a land charge under s. 10.

Reason for closing the register.

As " annuities " only included those terminable with life and did not include an annuity created by a marriage settlement or Will, very few " annuities " were ever registered. It had been held that an unregistered " annuity " was good against a subsequent purchaser with notice, and good against creditors with or without notice (*Greaves* v. *Tofield*, 14 Ch. D. 563), hence they were only registered in order to give notice to purchaser.

Penalty for non-registration of old annuities.

After 1925 an " annuity " created before 1926, which is not registered either as an annuity or as a land charge, will be void, as against a creditor or purchaser : L. C. Act, 1925, s. 5 ; and see L. P. Act, 1925, s. 199 (1).

Annuities arising under settlement.

A jointure or other annuity or rentcharge terminable with life and arising under a " settlement " within the meaning of the S. L. Act, 1925, is protected without registration. For, when it is overreached, the charge attaches to the capital money arising from the transaction or the income thereof, and after 1925 the capital money must be paid either to a trust corporation or to not less than two S. L. Act trustees : S. L. Act, 1925, ss. 72 and 94.

Annuities affecting the proceeds of land held on trust for sale.

An annuity, terminable with life and affecting land held on trust for sale, is also protected without registration. For, when it is overreached, the charge is made to attach (if it did not do so originally) to the proceeds of sale or other capital arising, which

again must be paid either to a trust corporation or to not less than two trustees : L. P. Act, 1925, ss. 2 (2), (3) (v) (*a*), 27, 28.

Definition of "general equitable charge."

It follows that when in s. 10, Class C (iii), a "general equitable charge" is defined, such a charge does not include one which arises or affects an interest arising under a trust for sale or a settlement.

Legal rentcharges or annuities.

Again a perpetual rentcharge or one held for a term of years absolute (not arising under a settlement) is capable of subsisting as a legal estate, and when held for a legal estate, requires no protective registration under the L. C. Act, 1925, save when treated as a private mortgage. With the exception of "puisne mortgages" not registered in a local deeds register, or in the joint stock company's register, that Act is designed to protect equitable interests by registration, not legal estates, they do not, with the said exception, require any such protection.

Deeds of Arrangement.

Deeds of arrangement must be registered in Central Office.

Deeds of arrangement between a debtor and his creditors are required by the Deeds of Arrangement Act, 1914, to be registered in the Bills of Sale Department of the Central Office, and if not so registered, are void.(*u*) Deeds of arrangement cannot be so registered before they have been executed by the assignee : Deeds of Arr. Rules, Pt. II, r. 7. A certificate of registration with the date of registration must be endorsed on the orginal deed sealed by the Central Office (r. 8). A copy of this deed must be filed, and be endorsed with the information directed by r. 6.(*v*)

Also (as against purchasers) at the Land Registry.

The L. C. Act, 1925, ss. 1–8, directs that there shall be kept at the office of Land Registry a register of deeds of arrangement affecting land. In this register a deed of arrangement may be registered in the name of the debtor on the application of a trustee of the deed, or of a creditor, assenting to or taking the benefit of the deed. Every deed of arrangement, whether made before or after the commencement of the Act, shall be void as against a person who, after the commencement of the Act, becomes a purchaser for value of any land comprised therein, or affected thereby, unless such deed is registered as above.

(*u*) *Hedges* v. *Preston* [1899], 80 L. T. 847 ; *secus* in the case of named creditors : *Re Saumarez* [1907], 2 K. B. 170 ; 76 L. J. K. B. 828. *Cf. Re Allix* [1914], 2 K. B. 77 ; 83 L. J. K. B. 665 ; and Williams on Bankruptcy, 13th ed., 870. This Act does not apply to arrangements made by limited companies : *Re Rileys* [1903], 2 Ch. 590 ; 72 L. J. Ch. 678.

(*v*) See Williams on Bankruptcy, 13th ed., 871, 891, *et seq.*

Result of enactments.

The result of the above enactments is that a deed of arrangement is, unless made by a foreigner (*Dulaney* v. *Merry* [1901], 1 K. B. 536 ; 70 L. J. K. B. 377), absolutely void unless registered in the Central Office, and is void against a purchaser for value of land unless it is also registered in the Land Registry. After 1925, a deed of arrangement whose registration has expired by effluxion of time may be re-registered ; this registration will be effective for a further five years. Where a deed of arrangement has been registered before 1925, then one year from 1st January, 1926, is allowed for re-registration : L. C. Act, 1925, s. 8 (4).

Re-registration.

Land Charges.

Register of land charges.

Besides the register above mentioned, the L. C. Act, 1925, s. 10, directs that there shall be kept at the Land Registry a register of " land charges," which are divided into classes A. to E., and may be shortly described as follows :—

Classes of land charges.

Class A.—Sets out the charges which were land charges within the meaning of the Act of 1888, with an addition referring to orders made by the court, in lieu of a court leet, as to repairs to dykes, &c.

Class B.—Extends Class A. to cover charges created otherwise than pursuant to the application of some person, whether made before or after 1st January, 1926, but when made before, then only when acquired under a conveyance made after that date.

Class C.—Obligations of the following nature created before or after 1926, but when created before 1st January, 1926, then only when acquired after that date :—

(i) " Puisne mortgages," *i.e.*, legal mortgages not registered at a local deeds registry and not protected by deposit of documents.

(ii) " Limited owner's charge," *e.g.*, by discharge of death duty attributable to capital by a tenant for life.

(iii) " General equitable charge," *i.e.*, not secured by a deposit of documents nor arising under a trust for sale or a settlement, and not coming within any other class.

(iv) An " estate contract," *i.e.*, to convey or create a legal estate.

Class D.—

(i) Inland Revenue charge, for duties payable on a death after 1925.

(ii) "Restrictive covenant" entered into after 1925 and affecting freeholds.

(iii) "Equitable easement" created after 1925.

Class E.—An "annuity" created before 1926, which might have been registered in the annuities register.

Mode of registration.

All the above may be registered in the land charges register.

A land charge for securing money created by a limited company if registered under s. 93 of the Companies Act, 1908, has effect as if registered under the L. C. Act, 1925.

Likewise "general equitable charges" "restrictive covenants," "equitable easements" and "estate contracts" may be registered as land charges in Yorkshire instead of in the Land Registers.

A "puisne mortgage," though created before 1926, may be registered as a land charge before it is transferred.

Legal mortgages.

Land charges of Class A. for securing money take effect as legal mortgages, hence the chargee obtains a power of sale.

Protection of purchasers.

Purchasers are protected against a non-registered land charge when it ought to have been registered by ss. 13 and 14.

This list of land charges has now become so important that a purchaser cannot be advised to complete without obtaining an official certificate of search at the Land Registry.

Local Land Charges.

Local land charges.

Local land charges, *i.e.*, charges and obligations created by statute in favour of a county, metropolitan, urban, rural district or municipal authority, must under s. 15 of the L. C. Act, 1925, be registered by the proper officer of the local authority, who must give the usual official certificate of search in relation thereto; these charges stand on the same footing as land charges of Class B.

It would have been more satisfactory had it been possible to arrange for these charges to have been registered at the Land Registry, but this was found to be impracticable. This section however is a distinct advance, for it enables a purchaser, as of right, to obtain a certificate from the local authority.

One year is given within which a local authority may after 1925 register its charges created before 1926.

Savings.

Even though the local charge affects land registered under the L. R. Act, 1925, the charge will be entered in the register kept by the local authority and not in the register of title.

Registration under any part of the Act will be sufficient: s. 21. Overreaching powers conferred by other Acts are saved: s. 22. Save in regard to local land charges, the Act does not apply to matters which, as respects registered land, can be protected on the register of title: s. 23.

Form of application for registration; duties of the registrar under the L. C. Act, 1925.

As under rules made pursuant to s. 19 the registrar will, as respects land charges, be guided by the particulars furnished with the application to register, it is important that the application should show clearly, by means of a plan or otherwise, the land intended to be affected. His duties under the L. C. Act, 1925, are purely ministerial. He will not consider whether or not the particulars laid before him are correct or sufficient, he will merely register the information furnished to him. If the applicant does not furnish sufficient information to identify the land or as to nature of the charge or claim he will have no right to complain if the registration proves to be useless.

Official Searches.

Official searches.

Any person may require an official search to be made in the Land Registry. The officer making the search is directed to make and file in the office a certificate setting forth the result thereof; and office copies of the certificate are to be issued on requisition. In favour of a purchaser, the certificate, according to the tenor thereof, is conclusive, affirmatively or negatively, as the case may be.

Protection to solicitors and others obtaining an official search.

Where a solicitor obtains an office copy certificate of result of search, he is not answerable in respect of any loss that may arise from error in the certificate; and where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also are not so answerable; and where such persons obtain such an office copy without a solicitor they are protected in like manner: L. C. Act, 1925, s. 17 (7), (8), (9).

Official certificates can also be obtained of search in the Middlesex and Yorkshire deeds registers. It is not worth while for a solicitor or his clerk to make a search himself, the fees for an official certificate are not heavy, and the protection afforded by the certificate is worth having.

As to bankruptcies.

The search for pending actions will include petitions in bankruptcy: L. C. Act, 1925, s. 2; the search for writs and orders will include receiving orders in bankruptcy: *ib.*, s. 6. Property of all kinds acquired by an undischarged bankrupt after his

Dealings by undischarged bankrupt.

bankruptcy, may, before the intervention of the trustee in bankruptcy, be dealt with by the bankrupt so as to confer a good title on a purchaser for value in good faith whether or not he has notice of the bankruptcy : Bankruptcy Act, 1914, s. 47 ; see *Hosack* v. *Robins* [1918], 2 Ch. 339 ; 87 L. J. Ch. 545. Once the trustee has intervened he cannot, by withdrawing, re-vest the property in the bankrupt : *Hill* v. *Settle* [1917], 1 Ch. 319 ; 86 L. J. Ch. 243. Hence, an intending purchaser need not inquire as to receiving orders made before the bankrupt acquired the property. This rule as settled in *Cohen* v. *Mitchell* [1890], 25 Q. B. D. 262 ; 59 L. J. Q. B. 400, always applied to personalty but is now extended to realty and chattels real by s. 47 of the Bankruptcy Act, 1914.

Register of annuities.

Until the annuity register is officially closed searches should be made in it for "annuities" granted before 1926, other annuities (if registered at all) will be included in the search for land charges.

What searches should now be made.

Against a vendor being a beneficial owner.

The practice as to searches should be as follows : The purchaser should make a requisition for an official search in the Land Registry against the name of the vendor being a beneficial owner (according to a form which he can obtain at the office) for—

(1) pending actions, writs and orders for a period extending back five years ;

(2) annuities and rentcharges for a period extending back to the 26th April, 1855, or to the time when the vendor's title first accrued, or he attained full age, if later than that day ;

(3) deeds of arrangement and land charges from the 1st January, 1889, or from the time when the vendor's title first accrued, if later than that day.

Searches against former owners, when necessary.

If the vendor has acquired the property otherwise than by purchase for value, similar searches should be made against his predecessor or predecessors in title back to and including the last purchaser for value.

Searches when vendors are trustees.

If the vendors are trustees, the only necessary search formerly made against them was for pending actions. But in that case the usual searches should be made against the settlor, testator, or other person by whom the trust was created. After 1925 it may be necessary to search against persons appearing to be trustees as if they were beneficial owners : 1 Wolst. & Cherry, 11th ed., Chap. VII, where searches generally are discussed.

Where the vendor has acquired the property by a recent purchase, he should be asked to produce the certificates of the result of searches made by him. Certificate of result of former search.

If a search discloses any annuity, pending action, writ or order, deed of arrangement, or land charge affecting the property, a release or discharge must be obtained, unless it will be overreached by the conveyance: L. P. Act, 1925, s. 43.

Usual Searches.

In addition to the official certificates to be obtained from the Land Registry (Land Charges Department), an official certificate should be obtained from the local authority or authorities, for local land charges under L. C. Act, 1925, s. 15. Official certificate of search from local authority.

Where the land is in Middlesex or Yorkshire an official certificate should be obtained against the name of any person capable of disposing of the land from the date on which such person acquired his interest or attained full age till the date of registration of the instrument whereby he disposed of his interest, dates inclusive. This search after 1925 will only extend to instruments transferring or creating legal estates, including probates and letters of administration. In regard to Yorkshire, the search should also extend to the land charges capable of registration in the local register under L. C. Act, 1925, s. 10 (6). Middlesex and Yorkshire.

Where the vendor is a limited company the register at Somerset House kept under s. 93 of the Companies Act, 1908, for incumbrances and other entries; these after 1925 may include certain land charges: L. C. Act, 1925, s. 10 (5). Limited companies.

The certificate of search for land charges will be sufficient to cover charges for duties on a death occurring after 1925: L. P. Act, 1925, s. 17. Death duties.

Where the title to registered land is absolute, no search outside the register is required save in regard to local land charges. Where the title is possessory the same searches are required down to the date of first registration, as if the land were not registered. After that date the position is the same as if the title were absolute. Registered land.

Searches and Inquiries.

Where land in any part of England is sold under a title commencing later than 1862, it is not always safe to assume that the land had not been registered under the Land Registry Act, 1862. A purchaser may inspect the public index and map When search should be made in Land Registry to

ascertain whether land has been registered.

of registered land kept at the Land Registry to ascertain whether the land has been registered or not.

Searches in the court rolls

Where enfranchised land is sold, the title preceding the date of enfranchisement consists of the copyhold title, or the title of the person in whom the L. P. Act, 1922, 12th Sch., L. P. Act, 1925, 1st Sch., and S. L. Act, 1925, 2nd Sch., vests the legal estate, hence the court rolls must be searched for entries affecting the property, though the true title, not necessarily the title shown on the court rolls, is what is material.

Inquiry of tenants or occupiers.

An inquiry should always be made of the tenant (if any) of the property as to the nature and terms of his tenancy. The occupation of land by a tenant affects a purchaser with constructive notice of all the tenant's rights, but not with notice of his lessor's title or rights : *Hunt* v. *Luck* [1902], 1 Ch. 428 ; 71 L. J. Ch. 239. Notice of the tenancy is notice of the tenant's rights under the Agr. Holdings Act, 1923, and the purchaser can obtain no compensation from a landlord who has consented to an improvement under the Act.(*u*) It should be ascertained from persons in occupation of the land to whom they pay their rent, otherwise they might be squatters acquiring a statutory title: L. P. Act, 1925, ss. 12 and 14; L. R. Act, 1925, s. 70 (1) (*g*).

Inquiries by purchaser of things in action and equitable interests.

Where the subject of sale is a thing in action of any description, as, for instance, personalty vested in trustees, a debt, or policy of insurance, &c., or an equitable interest in land, inquiry should be made of the trustees, or debtor, or insurance company, estate owner, trust corporation (L. P. Act, 1925, ss. 137-8), &c., as to whether they have received notice of prior dealings or incumbrances. In the case of registered land, the Index of Minor Interests must be searched.

(*u*) *Re Lord Derby* [1912], 1 Ch. 479 ; 81 L. J. Ch. 567 ; Agr. Hold. Act, 1923, ss. 1, 2, 1st Sch., Pt. I.

CHAPTER VII.

Modes of Assurances of Land.

(1) *Modes of Assurances of Land.*

Abolition of customary assurances.

By s. 128 (3) of the L. P. Act, 1922, modes of assurance authorised by special custom are abolished, and all land, including land held in free tenure, but subject to custom, must be dealt with as land held in free and common socage discharged from custom.

Land subject to manorial incidents.

But where the land remains subject to manorial incidents, all assurances thereof, with the exception of Wills, grants and assignments of leases, for a year or less, or from year to year, but including assents (coupled with the probate or letters of administration), vesting orders and vesting declarations, provided that the assurance operates to vest the land or some interest therein in some person, must be produced to the steward within six months, unless the court extends the time, for endorsement, and the customary payments must be made: L. P. Act, 1922, s. 129.

Lands lie in grant only, actual entry unnecessary.

By s. 51 of the L. P. Act, 1925, all lands and all interests therein lie in grant, and are incapable of being conveyed by :—

(a) Livery,

(b) Livery and seisin,

(c) Bargain and sale,

but, as was formerly the case under assurances operating under the Statute of Uses, a conveyance of an interest in land may, subject to the prior rights thereto, operate to pass the possession or right to possession without actual entry : *ib.* " Possession " includes receipt of rents and profits, or the right to receive the same, if any : *ib.*, s. 205 (1) (xxi). A future interest, such as a remainder, does not have the right to possession inherent thereto. In other cases " possession " will pass.

Conveyances to transfer or create legal estates to be by deed.

With the exception of—

(a) Assents by a personal representative: Ad. of E. Act, 1925, s. 36.

(b) Disclaimers under s. 54 of the Bankruptcy Act, 1914, are not required to be in writing, *e.g.*, where a devisee or legatee refuses to accept a gift under a Will.

(c) Surrenders by operation of law, *e.g.*, where a tenant hands over his lease to his landlord and accepts a new lease in place of it.

(d) Tenancies not required by law to be in writing, *i.e.*, leases taking effect in possession for a term not exceeding three years at the best rent that can reasonably be obtained without a fine (L. P. Act, 1925, s. 54 (2)); a tenancy granted by a tenant for life must be in writing: S. L. Act, 1925, s. 42 (5). It follows that tenancies granted by trustees for sale (S. L. Act, 1925, s. 28) or by personal representatives (Ad. of E. Act, 1925, s. 39) should also be in writing.

This exception with respect to the creation tenancies, otherwise than in writing, does not apply to an assignment of such a tenancy; that must be by deed.

(e) Receipts not required to be under seal, *e.g.*, ordinary receipts and receipts operating as a re-conveyance or surrender: L. P. Act, 1925, s. 115.

(f) Vesting orders.

(g) Conveyances taking effect by operation of law, *e.g.*, under the bankruptcy law.

—all conveyances, in order to transfer or create a legal estate, must (subject to the above exceptions) be by deed: L. P. Act, 1925, s. 52.

Equitable interests at will in land.

In default of writing, interests at will only will be created: L. P. Act, 1925, s. 54.

This is subject to the following exceptions:—

(a) Resulting, implied or constructive trusts: *ib.*, s. 53 (2).

(b) Parol leases for not more than three years at the best rent that can be reasonably obtained without taking a fine: *ib.*, s. 54 (2).

(c) Rights acquired under the Limitation or Prescription Acts, &c.: *ib.*, s. 55 (*c*).

(d) Rights enforced on account of part performance: *ib.*, s. 55 (*d*).

Of course, the court will interfere in all cases of fraud.

Instruments to be in writing.

Section 53 of the L. P. Act, 1925, sets out the instruments relating to land, which, subject to the exceptions referred to, must be in writing, for instance, subject to these exceptions, a declaration of trust, and a disposition of an equitable interest must be in writing. See as to contracts: s. 40.

Creation of equitable interests.

See also as to the creation and disposition of equitable interests (L. P. Act, 1925, s. 4) preserving the right to create in equity interests which could have been created at law under the Statute of Uses.

Appointments under powers, legal estate does not pass.

Having regard to the repeal of the Statute of Uses by the L. P. Act, 1922 (see L. P. Amend. Act, 1924, 1st and 10th Schs., as to repeals, repeated in L. P. Act, 1925), and to s. 1 (7) of the L. P. Act, 1925, an assurance made under a power of appointment, or power to convey or charge land or any interest therein, will, subject to the exceptions referred to below, only operate to transfer or create equitable interests.

General rule as to transfer or creation of a legal estate.

The general rule then is that, after 1925, in order to obtain a conveyance which is to operate to transfer or create a legal estate (*i.e.*, a fee simple in possession or a term of years absolute), that conveyance must be made by the estate owner of the estate in the land which is to be transferred or out of which a new legal estate (*e.g.*, an easement, a rentcharge or a term of years absolute) is to be created.

Conveyance under power of attorney.

A conveyance made under a power of attorney, in the name of the estate owner, whether the power is conferred by a statute or other instrument, is no exception to the rule.

Conveyance by legal mortgagee.

A conveyance on sale by a legal mortgagee (L. P. Act, 1925, ss. 88 and 89) is an exception to the rule when (as will usually happen) he elects to convey in his own name; but when he elects to convey under either of those sections in the name of the mortgagor, it is not an exception.

The following are examples of exceptions to the rule :—

Tenant by *elegit*.

(i) The term of years absolute taken by a tenant by *elegit*: see Chapter VI, *supra*.

Legal estates got in by statute.

(ii) The legal estates got in by L. P. Act, 1922, 12th Sch., and L. P. Act, 1925, 1st Sch.: see Chapter I, *supra*. In strictness this is not an exception unless the statutes are treated as conveyances.

Lease at a rent under statutory powers.

(iii) Leases under statutory powers (*e.g.*, by a mortgagor or mortgagee in possession (L. P. Act, 1925, s. 99); or by a tenant for life under S. L. Act, 1925, ss. 41-48, 109; or by the managing trustees of a charity when the legal estate is vested in the Official Trustee of Charity Lands) can be made in the name of the estate owner: L. P. Act, 1925, s. 8 (1). When so made, this, again, is not a true exception, for the sub-section operates to give a statutory power of attorney.

A mortgagor in possession may want the power, for the mortgage term will be the immediate reversion expectant on the lease. When a mortgagee grants a lease his mortgage term will generally be of sufficient length to enable the new term to be created thereout.

A tenant for life will generally be the estate owner himself, and he cannot, as a rule, convey any legal estate till a vesting instrument has been executed: S. L. Act, 1925, s. 13.

Long terms for securing rentcharge.

(iv) The owners of legal rentcharges (*i.e.*, either perpetual or held for a term of years absolute) can, under L. P. Act, 1925, s. 123, create legal terms for compelling payment of the rentcharge: *ib.*, s. 8 (2).

But where the rentcharge is an equitable interest (*e.g.*, when held for life) the owner thereof can only create an equitable term (*ib.*, s. 8 (2)) and then require the estate owner of the land to clothe that term with a legal estate: *ib.*, s. 3; S. L. Act, 1925, s. 16.

Vesting orders.

(v) Vesting orders of the court (L. P. Act, 1925, ss. 3 (5), 30, 90, 91, 171 (2), 181; 1st Sch., Pt. III, para. 3 (iii); Pt. IV, para. 1 (4) (iii); *ib.* (11) (iv); S. L. Act, 1925, ss. 12, 16 (7), 36 (6); 2nd Sch., paras. 1 (4), 3 (1) (iv); T. Act, 1925, ss. 44-56; Ad. of E. Act, 1925, ss. 38 and 43 (2)) operate to pass legal estates: L. P. Act, 1925, s. 9 (1) (*a*).

Likewise, when the order is made by any other competent authority, *e.g.*, the Charity Commissioners or Board of Education.

Vesting declarations.

(vi) Vesting declarations, express or implied, made on the appointment or discharge of a trustee (T. Act, 1925, s. 40) operate to pass legal estates: L. P. Act, 1925, s. 9 (1) (*b*).

Vesting instruments under S. L. Act, 1925.

(vii) Vesting instruments, which may take the form of vesting deeds, vesting assents or vesting orders, when made under the S. L. Act, 1925 (see ss. 4-10, 12, 16 (7), 36; 2nd Sch., ss. 1 (2), 2, 3), operate to get in any legal estate, not already vested in the tenant for life or statutory owner, which he has power to convey: L. P. Act, 1925, s. 9 (1) (*c*).

Conveyances by persons appointed by the court.

(viii) A conveyance by a person appointed for the purpose by the court (T. Act, 1925, s. 50) has the same effect as a vesting order, hence operates to pass a legal estate: L. P. Act, 1925, s. 9 (1) (*d*).

(ix) Obviously persons authorised by statute to convey in the name of an estate owner can pass a legal estate : *ib.*, s. 9 (1) (*d*). The examples are the leasing powers referred to above : see also s. 8.

Persons authorised by statute to convey in the name of the estate owner.

(x) Powers reserved or conferred by the L. P. Act, 1925 : *ib.*, s. 9 (1) (*c*). The " reserved " powers refer to s. 8, the " conferred " powers relate primarily to those conferred on mortgagees, not only those enabling a mortgagee to convey the mortgagor's estate or term on a sale, but to acquire it by enlargement vesting or otherwise when the right of redemption is barred whether on foreclosure or under the Limitation Acts : *ib.*, ss. 88 and 89.

Conveyances made under " reserved " powers or " conferred " powers.

(xi) The powers reserved by s. 8 include :—

The reserved powers.

(a) The powers of the administrator of a convict under the Forfeiture Act, 1870, to deal with the legal estate of a convict.

(b) The power to deal with land under the Friendly Societies Act, 1896.

(c) Powers conferred by statutes of a special nature.

Such powers include the power for a corporation having compulsory power to acquire land, to convey the land to themselves : Lands Clauses Act, 1845, s. 77.

Also the powers conferred by private Acts on certain insurance societies to vest land and mortgage debts in estate trustees for the society by means of enrolling the names of the trustees at the Central Office. The majority of the societies operating in this way have registered themselves as limited companies, hence this power will seldom be required.

The reserved powers will, whenever practicable, be exercised in the name of the estate owner : *ib.*, s. 7 (4). A corporation can, by appointing an officer, sign and execute a deed in the name of the estate owner : *ib.*, s. 74 (4).

Assents a new form of conveyance of a legal estate.

Assents in writing by a personal representative are a new form of conveyance of a legal estate; they will relate back to the death, whether made by an executor or administrator, unless the contrary intention appears; this is important in connexion with the confirmation of intermediate dealings by the person named in whose favour the agreement is made. They operate as conveyances and the usual covenants implied by conveying, as personal representatives, can be implied thereunder : Ad. of E. Act, 1925, s. 36. This section applies to vesting instruments within the meaning of the S. L. Act, 1925.

Reservations and confirmation of past transactions.

The power to reserve legal estates under s. 65 of the L. P. Act, 1925, without a grant from the grantee, was required by reason of the repeal of the Statute of Uses, and for the same reason the power to confirm transactions conferred by s. 66 was required. Save in the case of absolute owners, the latter power can only be exercised with the leave of the court; still an application to the court is cheaper than obtaining a private Act of Parliament.

Power to convey to self.

Express power is taken (L. P. Act, 1925, s. 72) for a person to convey or vest land in himself: this is not so absurd as at first sight appears. Many vesting instruments under the S. L. Act, 1925, will be made by the settlor and there is no reason why the qualified covenants implied by the words "As settlor" should not enure for the benefit of his successor. Under the old practice the land would have been conveyed to a grantee to uses, but this expedient is no longer available.

Execution of deeds.

After 1925 an individual must sign or affix his mark to a deed; sealing alone will not be sufficient: L. P. Act, 1925, s. 73. As to execution by Corporations, see *ib.*, s. 74.

Conveyances on behalf of lunatic.

After 1925 conveyances on behalf of lunatics and defectives will be made by the committee or receiver in the name of the lunatic or defective, thus standardising the practice: L. P. Act, 1925, s. 22.

Conveyances of legal estate on behalf of infants.

No infant will have a legal estate, it will be conveyed by the statutory owners, personal representatives, or other trustees in whom it is vested: see Chapter I.

Conveyances by married women.

Where a woman married before 1883 acquired her property before 1883, her husband will still join to convey, but the deed will not be acknowledged: L. P. Act, 1925, s. 167. But where she is a trustee or personal representative, her husband will not be a necessary party: L. P. Act, 1925, s. 170. Where she is a tenant for life or statutory owner of settled land, she becomes a trustee of the land and of her powers (S. L. Act, 1925, s. 107), and she will convey without her husband: *ib.*, s. 25. As to disclaimers by her, see L. P. Act, 1925, s. 168.

Court may dispense with husband's concurrence in certain cases.

The court may dispense with the concurrence of the husband if he is a lunatic, idiot, or of unsound mind, or from any other cause incapable of executing a deed or making a surrender, or if his residence is not known, or if he is in prison, or living apart from his wife either by mutual consent or by sentence of divorce, or from any other cause whatever: F. & R. Act, 1833, s. 91. This is now supplemented by L. P. Act, 1925, s. 167 (3), under

which the court may declare that the disposition shall have the same effect as if the husband had concurred.

What evidence requisite when husband is abroad, or is living apart from his wife.

When the husband has gone beyond the seas, the court, before making an order, will require it to be shown that he has gone away under circumstances from which it may be inferred that he does not intend to return. If he is in correspondence with his wife and occasionally sends her money, the court will not make the order: *Re Squires* (1855), 17 C. B. 176; 25 L. J. C. P. 55. If he is living apart from her, the court will, as a general rule, require to be satisfied that he does not contribute to her support; but exceptions have been made to this rule, *e.g.*, when the husband has refused to join without being paid for it: *Re Caine* (1883), 10 Q. B. D. 284; 52 L. J. Q. B. 354.

Voluntary conveyances.

Section 172 of the L. P. Act, 1925 (as respects creditors), gives effect to 13th Eliz., c. 5, but having regard to the Bankruptcy Act, 1914, this section is of little practical importance.

Section 173 of the same Act (relating to subsequent purchasers) reproduces 27 Eliz., c. 4, as amended by the Voluntary Conveyances Act, 1893. The practical result is that the claims (as against the voluntary conveyance) of purchasers for value who acquired title after 28th June, 1893, may, independently of actual fraud, be ignored.

No resulting trust for grantor.

What, however, is of importance, is that in a voluntary conveyance, a resulting trust for the grantor will not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee; formerly the practice was to convey "to the use" of the grantee to negative a resulting use.

Assurances of Leaseholds.

Abolition of *interesse termini*.

A term of years absolute, whenever created, will be capable of taking effect from the date fixed for its commencement without actual entry: L. P. Act, 1925, s. 149 (2).

Terms at a rent or for a fine to take effect within twenty-one years.

Terms at a rent or for a fine purported to be created after 1925 will be void unless they are limited to take effect within twenty-one years. Contracts to create such terms to take effect after the twenty-one years will be void. This does not apply to terms created by or under a settlement for mortgage indemnity or other like purposes: *ib.*, sub-s. 3.

Perpetually renewable leases not allowed, nor a renewal for more than sixty years.

Under the 15th Sch. to the L. P. Act, 1922, see (Chapter I)—

(i) A grant of a perpetually renewable lease or underlease operates to create a term of 2,000 years or a like term less one day.

(ii) A contract in force on 1st January, 1926, to grant a lease with a covenant for perpetual renewal (otherwise than by way of renewal) operates as a contract for a lease for 2,000 years, with a right to adjustment of rent. If there is a lease in force with a perpetual right of renewal this is converted into a long term.

(iii) A like contract made after 1925 operates as a contract for a lease for 2,000 years or for that term less one day.

(iv) A contract made after 1925 to renew a lease for more than sixty years is void.

Leases for lives take effect for ninety years.

Leases at a rent or for a fine, for lives, or for a term terminable with life or marriage whenever made take effect for a term of ninety years determinable by notice : L. P. Act, 1925, s. 149 (6). Contracts for the like leases, whenever made, operate as contracts to grant leases for ninety years, terminable by notice: *ib.*

Powers to grant leases.

Powers to grant perpetually renewable leases, or leases for lives, operate as powers to grant leases for 2,000 years or ninety years determinable on either side.

Allotments Act, 1908.

The 15th Sch. of the Act of 1922 does not prevent the grant of renewable leases under the Allotments Act, 1908.

CHAPTER VIII.

Contents of Conveyances.

The ordinary parts of a conveyance are the names and descriptions of the parties, the recitals (if any), the operative part (including the consideration, the conveyance itself, the parcels, and the *habendum*), and the covenants, if any are required.

Recitals.

Recitals.

The recitals in a conveyance to a purchaser should be as few and simple as possible; see Hints on Drafting, Chapter III, *supra*.

Recital of grantor's seisin desirable.

Where the vendor is seised for an estate in fee simple free from incumbrances, a recital of such seisin is correct without referring to the instrument under which the title is derived, or the deed may be drawn without any recital at all. A recital of seisin is, as a general rule, desirable—first, because after twenty years such a recital is conclusive evidence of the seisin, unless proved to be inaccurate;(*a*) and secondly, because it may in some cases create an estoppel.

Estoppel by recital.

The doctrine of estoppel is that a distinct statement in a deed concludes the parties to it, or that one of them whose statement it is, and all persons deriving title under him, even if in fact the statement be untrue. Thus, if a conveyance recites that the grantor is seised in fee, whereas in fact he has not the legal estate, the grantee is said to take an estate by estoppel. If the grantor subsequently acquires the legal estate, the estoppel is fed, and from that time the grantee is seised at law just as if the legal estate had been vested in the grantor at the date of the deed, so that if the grantor makes a subsequent conveyance to another person as purchaser for value without notice of the first

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(*a*) L. P. Act, 1925, s. 45 (6). A deed twenty years old containing a recital of the vendor's seisin is not, however, a sufficient commencement of title, so as to preclude the purchaser from requiring a thirty years' title: *Re Wallis and Grout* [1906], 2 Ch. 206; 75 L. J. Ch. 519, in which Swinfen Eady, J., disapproved of *dicta* to the contrary in *Bolton* v. *London Sch. Bd.* (1878), 7 Ch. D. 766; 47 L. J. Ch. 461, and see L. P. Act, 1925, s. 44 (1).

To create estoppel statement must be precise.

deed, the latter takes nothing: *Bensley* v. *Burdon* (1826), 2 Sim. & St. 519; *aff.* 8 L. J. Ch. 85. But to create an estoppel by such a recital, the statement must be precise that the grantor has the legal seisin—a recital that the grantor is "seised or entitled at law or in equity," or "is seised or otherwise well and sufficiently entitled," does not create an estoppel, nor does a covenant by the grantor that he has a good right to convey;(*b*) there can be no estoppel when the truth appears by the same instrument.(*c*)

Covenant does not create estoppel.

Statement may estop both parties or only one.

A statement in a deed may estop both parties or only one. When it is one which both parties have mutually agreed to admit as true, it is an estoppel on both, but where it is intended to be a statement of one party only, the estoppel is confined to that party, and the intention is to be gathered from the whole instrument. Where there is a recital of the grantor's seisin, and also a covenant to the same effect, the recital will be considered as his statement only, because if it were treated as binding on the grantee, the covenant would be nugatory.(*d*)

Recital of seisin with covenant estops grantor only.

Estoppel does not apply to trustees for public purposes.

The doctrine of estoppel applies only to private individuals, and not to trustees for public purposes: *Fairtitle* v. *Gilbert* (1787), 2 T. R. 169.

Covenants for title run with estate by estoppel.

An estate by estoppel has, as between the parties bound by it, the incidents of a valid legal estate. It passes by deed, and the deed carries with it the benefit of covenants which, if the estate were legal, would run with the land, *e.g.*, covenants for title; whereas if A. purports to convey land to B. by a deed not creating an estoppel, and B. purports to convey the same land to C., and it afterwards turns out that owing to a prior conveyance by A. he had no estate at the date of the conveyance to B., nothing will have passed to C., hence C. cannot sue on any covenant for title, either express or implied, contained in the conveyance to B.: *Onward Building Socy.* v. *Smithson* [1893], 1 Ch. 1; 62 L. J. Ch. 138.

Covenants for title of vendor who has no estate do not pass to assign of purchaser where no estoppel.

Express power to sell settled land rendered useless.

A power to sell settled land (*e.g.*, the old power to revoke uses and appoint new ones) is useless (S. L. Act, 1925, s. 108 (2)), save for the purpose of constituting the donees as trustees for

(*b*) *Right* v. *Bucknell* (1831), 2 B. & Ad. 278; 9 L. J. (O. S.) K. B. 304; *Heath* v. *Crealock* (1874), 10 Ch. 22; 44 L. J. Ch. 157.

(*c*) Co. Lit. 352 b; and see Norton, 194.

(*d*) *Young* v. *Raincock* (1849), 7 C. B. 310; 18 L. J. C. P. 193; *Stroughill* v. *Buck* (1850), 14 Q. B. 781; 19 L. J. Q. B. 209. For a case in which both parties were held to be estopped, see *Bowman* v. *Taylor* (1834), 2 A. & E. 278; 4 L. J. K. B. 58.

the purposes of that Act (*ib.*, s. 30 (2)), hence will not be mentioned, the vesting instrument will state who are the trustees of the settlement.

Deed creating equitable power should be recited.

If the vendor has an equitable power of appointment (see L. P. Act, 1925, s. 1 (7)), when that power is exercised the instrument creating it should be referred to, but if such a power is exercised the question will arise whether the vendor, if all other equitable interests have been discharged, is bound to get the legal estate in from the estate owner for the benefit of the purchaser: *ib.*, ss. 3 and 42. As a general rule, deeds conveying a legal estate will not refer in any way to the exercise of an equitable power. Indeed a purchaser will insist on title being made under the Settled Land Act, 1925, or under a trust for sale if thereby the equitable interests can be kept off the title: *ib.*, s. 42. Again where title is being made by trustees for sale (*ib.*, ss. 23-33) the instrument creating the trust for sale, not that declaring the trusts of the proceeds of sale, should be recited.

Recitals where the vendor is trustee for sale, and in other cases.

As trustees for sale may sell either by private contract or public auction (T. Act, 1925, ss. 12, 69), the conveyance need not, whenever the trust was created, state which of these modes is adopted, but should recite generally that the vendor has agreed to sell. Where the vendor is conveying less than an unincumbered fee simple, the recital should show the precise nature of his interest, and the nature and amount of the legal charges (if any) thereon. It seems that ample methods have been furnished to enable all equitable charges to be overreached. If any person besides the vendor and purchaser is made a party to the deed, it should be shown for what purpose his concurrence is necessary.

Recitals of trusts.

A recital of a trust, if it is clear and unambiguous, is in itself a declaration of trust and a purchaser is not entitled to inquire how the trust was created: *Re Chafer and Randall* [1916], 2 Ch. 8; 85 L. J. Ch. 435.

Consideration.

The consideration for the conveyance may be stated in the recitals or in the body of the deed.(*e*)

The L. P. Act, 1925, s. 69, provides:—

Receipt in deed or indorsed, authority for payment to solicitor.

> Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or

(*e*) L. P. Act, 1925, ss. 67, 68. See T. Act, 1925, ss. 12, 69; *Capell* v. *Winter* [1907], 2 Ch. 376; 76 L. J. Ch. 496.

giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

This section is extended by the T. Act, 1925, s. 23 (3), to the case of a trustee-vendor.

Meaning of "solicitor."

"Solicitor" in the above section means the solicitor acting for the party to whom the money is expressed to be paid, but it is conceived that, in the absence of anything to suggest the contrary, the purchaser is bound to assume that the solicitor producing the deed is acting as solicitor for that party: *King* v. *Smith* [1900], 2 Ch. 425; 69 L. J. Ch. 598.

Parcels and General Words.

Parcels.

The property which is the subject of sale should be correctly described either in the body of the deed or in a schedule. The purchaser is entitled to have a plan: *Re Sparrow* [1910], 2 Ch. 60; *Re Sansom* [1910], 1 Ch. 741. The parcels were formerly followed by what were called "general words," and an "all the estate" clause, but these are now implied by ss. 62 and 63 of the L. P. Act, 1925, which apply to conveyances made after 1881.

General words now implied.

General words pass all ways actually used.

The general words in s. 62 will pass to the purchaser all ways actually used at the date of the conveyance, although only used by the vendor's permission. Thus, where a lessee had by the lessor's permission used a way over adjoining property of the latter, and the property in the lease was subsequently conveyed in fee simple by the lessor to the lessee, it was held that the conveyance passed a right of way such as had been actually enjoyed during the lease.(*f*)

Rights of the nature of profits *à prendre* which are appurtenant to the land sold will pass by the operation of these words, even though they affect the land of a third person: *White* v. *Williams* [1922], 1 K. B. 727; 91 L. J. K. B. 721.

Where land held by the same vendor is sold contemporaneously in lots, a right for the purchaser of one lot to go on another lot to clean a mill-stream or repair its banks, will not pass by virtue of the L. P. Act, 1925, s. 62, unless before the severance of ownership that right had been enjoyed, however precariously, by the occupier of that part of the land apart from the ownership or occupation of the other part: *Long* v. *Gowlett* [1923], 2 Ch. 177; 92 L. J. Ch. 530.

(*f*) *International Tea Co.* v. *Hobbs* [1903], 2 Ch. 165; 72 L. J. Ch. 543; *Lewis* v. *Meredith* [1913], 1 Ch. 571; 82 L. J. Ch. 255. *Hansford* v. *Jago* [1921], 1 Ch. 322; 90 L. J. Ch. 129.

Appurtenances.

Generally a purchaser should be advised not to add words referring to appurtenances, as they might restrict the operation of the section, though they would not usually do so.

Vendor may sometimes insist on the general words being qualified.

Section 62 is not intended to alter the rights of the parties under a contract for sale. Where, therefore, under a contract independently of the Act, a vendor might have insisted that the general words of the conveyance should be limited to rights legally appurtenant to the land conveyed, *e.g.*, where the more extensive words in ordinary use might have the effect of creating a right of way *de novo*, which the purchaser had not contracted for, the vendor is entitled to have a provision inserted in the conveyance limiting the general words implied by s. 62 in like manner : *Re Walmsley and Shaw* [1917], 1 Ch. 93 ; 86 L. J. Ch. 120.

Presumption that soil of adjoining road up to middle passes by conveyance may be rebutted.

A conveyance of land adjoining a public highway passes *prima facie* the soil of the road up to the middle of it if belonging to the vendor, and this is so even where the land is described by reference to a plan annexed, the measurement and colouring of which would exclude it.(*g*) This presumption is liable to be rebutted by circumstances showing a contrary intention,(*h*) it does not apply to a conveyance of land abutting on land intended to be laid out as a street, but not yet dedicated to the public : *Leigh* v. *Jack* (1879), 5 Ex. D. 264 ; 49 L. J. Ex. 220.

Exceptions and reservations distinguished.

If any exceptions or reservations are intended, they should follow the description of the parcels. An exception must be of part of the thing granted, and which is existing at the time, *e.g.*, the mines under the surface. A reservation is of some right created for the first time over or in connexion with the thing granted, *e.g.*, a right of way or other easements to be enjoyed over the land, and operates by way of re-grant. A conveyance of a legal estate subject to an estate not in existence at the time of grant operates after 1925 as a reservation of that estate : L. P. Act, 1925, s. 65 (2) ; but this is not the correct way to reserve a right *de novo* : *ib.*, sub-s. 1. Before 1926 it was necessary that, at law, a deed containing a reservation should either be executed by the grantee, or that the easement should be reserved by way of use. After 1925 such a re-grant

(*g*) *Berridge* v. *Ward* (1861), 10 C. B. (N. S.) 400 ; 30 L. J. C. P. 218. See Norton, 232 ; the rule applies to streets in a town : *Re White* [1898], 1 Ch. 659 ; 67 L. J. Ch. 430 ; and to a non-tidal river : *Great Torrington, &c., Conservators* v. *Stevens* [1904], 1 Ch. 347 ; 73 L. J. Ch. 124. As to open ditches, see *Marshall* v. *Taylor* [1895], 1 Ch. 641 ; 64 L. J. Ch. 416.

(*h*) *Pryor* v. *Petre* [1894], 2 Ch. 11 ; 63 L. J. Ch. 531 ; *Mappin* v. *Liberty* [1903], 1 Ch. 118 ; 72 L. J. Ch. 63.

will be implied without execution: L. P. Act, 1925, s. 65. This section overrules *Wickham* v. *Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153, and *May* v. *Belleville* [1905], 2 Ch. 605; 74 L. J. Ch. 678.

Habendum, &c.

Habendum.

After the parcels comes the *habendum*, the office of which is to define or limit the duration of the estate to be taken by the grantee.

Words of limitation.

On a conveyance of the fee simple after 1925, words of limitation are unnecessary, whether the purchaser is an individual or a corporation. The word "assigns" is not, and never has been, a word of limitation. When granting an estate, less than the fee simple, words showing an intention to limit the estate of the grantee are necessary to prevent the fee simple passing.

Repeal of Statute of Uses.

The Statute of Uses having been repealed, conveyances to grantees to uses can no longer be effectual; but substituted modes of reserving legal estates and for legally confirming past transactions are provided by L. P. Act, 1925, ss. 65-6. There will be no resulting trust for the grantor under a voluntary conveyance merely because the property is not expressed to be conveyed for the use of the grantee: *ib.*, s. 60 (3).

When limitation to two or more persons creates joint tenancy on trust for sale.

A conveyance of land (not being settled land) to two or more persons of full age in fee simple makes them joint tenants at law and in equity, and they hold on trust for sale: L. P. Act, 1925, s. 36 Where words importing a tenancy in common are added, the grantees, or the four first named, remain joint tenants, and hold on trust for sale, the tenancy in common attaching to the proceeds of sale and the rents and profits until sale: L. P. Act, 1925, ss. 34, 35. Where the grantees have paid the purchase money in equal shares they will be joint tenants in equity; if their contributions are of unequal amount, they will be considered as tenants in common as respects the proceeds of sale.(*i*) Corporations may now hold land jointly with an individual: Bodies Corporate (Joint Tenancy) Act, 1899.

Conveyance to partners, trust for sale implied.

Where a conveyance is made to two partners of full age as joint tenants for partnership purposes, they will hold on trust for sale: L. P. Act, 1925, s. 36. The survivor will hold the proceeds of sale, as to the share of the deceased partner, in trust for his personal representatives. The same principles apply to

(*i*) *Aveling* v. *Knipe* (1815), 19 Ves. 441; Norton, 391, *et seq.* L. P. Act, 1925, ss. 34 to 38.

a purchase by several persons for the purpose of a joint adventure or speculation.(*j*)

Undivided shares in land prohibited.

If a legal estate in land (not being settled land) is held in trust for several persons as tenants in common, the estate owners hold it on trust for sale; if the estate owners convey the legal estate to the tenants in common the first four will hold it as joint tenants on trust for sale. The tenancy in common will attach to the proceeds of sale. Where, however, it is intended that the grantees shall take the proceeds of sale as joint tenants, the former equitable interest will be extinguished, and they will become joint tenants of the proceeds of sale and hold the land as joint tenants on trust for sale.(*k*)

Settled land.

Settled land can be held by the tenants for life of full age or statutory owners as joint tenants. If an infant and a person of full age are both entitled to life interests, the person of full age will take the legal estate in the settled land: S. L. Act, 1925, s. 19. No trust for sale will be implied till the settled land comes to be held in undivided shares.

Covenants for Title.

Statutory covenants by vendor conveying as beneficial owner.

A vendor who is a beneficial owner is bound to covenant for title as to his own acts and the acts of all persons through whom he derives title otherwise than as a purchaser for value. If a vendor conveys and is expressed to convey as beneficial owner, the usual qualified covenants for title by him will be implied, by virtue of the L. P. Act, 1925, s. 76, for right to convey,(*l*) for quiet enjoyment, for freedom from incumbrance, and for further assurance.(*m*)

Leaseholds.

If the property is leasehold, the usual further covenant is implied as to the validity of the lease.

Covenant by vendor who is not beneficial owner.

A vendor who is not a beneficial owner is not bound to enter into any other covenant than that he has done no act to incumber

(*j*) *Lake* v. *Craddock* (1732), 3 P. W. 158; *Morris* v. *Barrett* (1829), 3 Y. & J. 384. See *Davis* v. *D.* [1894], 1 Ch. 393; 63 L. J. Ch. 219; and see Partnership Act, 1890, ss. 20, 22, now qualified by L. P. Act, 1925, ss. 34-38.

(*k*) *Re Selous* [1901], 1 Ch. 921; 70 L. J. Ch. 402; L. P. Act, 1925, s. 36.

Covenants extend to acts of lessee who has surrendered.

(*l*) For the implied covenants, see L. P. Act, 1925, 2nd Sch. In one case A. granted a lease of land and afterwards for value took a surrender of the lease. He then conveyed "as beneficial owner" to a purchaser in fee. It was afterwards discovered that the lessee had, previously to the surrender, granted sub-leases by way of mortgage, which remained valid. It was held that A. was liable under the statutory covenant for title for the acts of the lessee: *David* v. *Sabin* [1893], 1 Ch. 523; 62 L. J. Ch. 347.

(*m*) As to all implied statutory covenants, see 1 Wolst. & Cherry, 11th ed., 250-67 also *Eastwood* v. *Ashton* [1915], A. C. 900; 84 L. J. Ch. 671.

the property ; and if a vendor conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee or receiver of a lunatic or defective or under an order of the court, he will be deemed, under s. 76 (*f*) to have given the usual covenant against incumbrances. This covenant will be implied also in an assent by a personal representative after 1925.

Whether, on sale by trustees, covenants for title from beneficiaries can be required.

When, under a Will, trustees hold on trust to sell for the payment of debts or for other purposes, and the purchase-money or the residue of the purchase-money (after discharging debts, or satisfying any other purposes for which the sale is to be made) is to be divided among persons who are *sui juris*, a purchaser cannot insist on the concurrence of the beneficiaries in order to have their express or implied covenants for title ; but where a trust for sale is exercisable at the request of any person, a purchaser may do so, apart from express stipulation (see, however, General Conditions of 1925) ; though it will generally be undesirable to require covenants for title from that person.(*n*)

Covenants by tenant for life.

A power of sale can no longer be exercised with the consent of a tenant for life, for such powers are made exercisable only by him : S. L. Act, 1925, s. 108. Where a tenant for life conveys under his statutory powers he will, after 1925, be a trustee of the land and will convey as such, unless he is absolutely and beneficially entitled subject only to equitable interests which will be overreached by the conveyance; in this case he should convey as beneficial owner, without any qualification of the covenants : General Conditions of 1925.(*o*)

Implied covenants by husband and wife on sale of wife's estate.

On a sale by the husband and wife of the wife's property, not being her separate property by statute or otherwise, the husband and wife should both convey as beneficial owners so as to be liable to implied covenants for title: L. P. Act, 1925, s. 76 (3); but if the wife is conveying under the S. L. Act, 1925, the husband will not be a party.

What may be recovered under covenants for title.

Under the usual covenants for title the purchaser, in case of eviction, may recover the value of the land and also of houses which he had built thereon subsequently to his purchase.(*p*)

(*n*) Dart, 7th ed., 568 ; *Coterell* v. *C.* (1866), 2 Eq. 330 ; 35 L. J. Ch. 466 ; *Re Tweedie and Miles* (1884), 27 Ch. D. 315 ; 54 L. J. Ch. 71 ; *Re Douglas and Powell* [1902], 2 Ch. 296, 313 ; 71 L. J. Ch. 850.

(*o*) As to the old practice, see *Re London Bridge Acts* (1842), 13 Sim. 176 ; *Poulett* v. *Hood* (1868), 5 Eq. 115 ; 37 L. J. Ch. 224.

(*p*) *Bunny* v. *Hopkinson* (1859), 27 Beav. 565 ; 29 L. J. Ch. 93.

Effect of covenant for further assurance.

If the owner of land subject to a mortgage sells part of it, and the conveyance does not refer to the mortgage, but contains a covenant for further assurance, that covenant is as effectual as a covenant against incumbrances, and the unsold part must bear the whole debt.(*q*)

Defects appearing in conveyance are within covenants.

Defects of title which come within the terms of the ordinary covenants for title are not excluded from their operation because they appear on the face of the conveyance or are otherwise known to the purchaser,(*r*) unless, of course, the property is conveyed subject to them.

Measure of damages.

Where the conveyance omits to notice a right of way created by the vendor over the land, there is a breach of the statutory covenant upon the execution of the deed, and the measure of damages is the difference between the value of the property as it is purported to be conveyed, and its value as the vendor had power to convey it, and in addition the costs incidental to ascertaining such latter value.(*s*)

Implied Covenants for Indemnity.

Implied covenants for indemnity

Under s. 77 of the L. P. Act, 1925, the following covenants are implied in conveyances, subject to rents—

Conveyance on sale subject to rentcharge.

(1) Where the conveyance is of the whole of the land affected by a rentcharge, subject to that rentcharge, a covenant by the grantees to pay the whole rentcharge, observe the covenants in the deed creating it and to keep the conveying parties indemnified against the rent and breach of covenants: *ib.*, 2nd Sch., Pt. VII. If the rentcharge has been legally apportioned a similar covenant is implied.

The like subject to part of rentcharge.

(2) Where the conveyance is of part of the land affected by a rentcharge subject to a part of the rentcharge not legally apportioned. First a similar covenant by the grantees to pay the equitably apportioned rent and observe the covenants so far as they relate to the land and to keep the conveying parties indemnified. And secondly, similar covenants by the conveying parties to pay the balance of the rent and observe the

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(*q*) *Re Jones* [1893], 2 Ch. 461; 62 L. J. Ch. 996; and see *Re Darby* [1907], 2 Ch. 465; 76 L. J. Ch. 689.

(*r*) *Page* v. *Midland Ry. Co.* [1894], 1 Ch. 11; 63 L. J. Ch. 126; *G. W. Ry. Co.* v. *Fisher* [1905], 1 Ch. 316; 74 L. J. Ch. 241.

(*s*) *Turner* v. *Moon* [1901], 2 Ch. 825; 70 L. J. Ch. 822; *G. W. Ry. Co.* v. *Fisher, sup.*; *Eastwood* v. *Ashton* [1913], 2 Ch. 39; 82 L. J. Ch. 313; affirmed 1915, A. C. 900; 84 L. J. Ch. 671.

covenants as respects the land retained and to indemnify the grantees : *ib.*, 2nd Sch., Pt. VIII.

Assignment on sale of a lease at a rent.

(3) Similar covenants as in No. (1) by an assignee of a lease : *ib.*, 2nd Sch., Pt. IX.

The like of part of land comprised in a lease.

(4) Similar covenants as in No. (2) by assignees of part of land comprised in a lease and by the lessors as respects the land retained : *ib.*, 2nd Sch., Pt. IX.

Variations.

The usual variations where part of the land is conveyed subject to the entire rent or exonerated from any rent are provided for by s. 77 (2), and under sub-ss. (6) and (7) the covenants may be varied and a charge imposed. The benefit of these covenants is made to run with the land.

Registered land.

As to implied covenants on transfer of registered leaseholds, see L. R. Act, 1925, s. 24. But the covenants implied under s. 77 of the L. P. Act, 1925, would appear to apply whether or not the land is registered. In practice it will generally be expedient to refer in conveyances to the covenants intended to be implied.

Implied Remedies.

Remedies for recovery of rentcharges, &c.

The usual remedies for recovery of rentcharges affecting land or another rentcharge are implied by L. P. Act, 1925, ss. 121-122.

While s. 190 supplies the usual remedies by entry and distress for breaches of the covenants implied under s. 77. See also s. 189 for the removal of certain doubts respecting the application of the Bills of Sale Acts to powers of distress given by way of indemnity against a rent or breach of covenant.

Deeds.

Acknowledgment, &c., as to deeds.

Where the deeds are retained by the vendor, an acknowledgment of the purchaser's right to production and delivery of copies, and, if the vendor is a beneficial owner, an undertaking for their safe custody, should be added. For this purpose a tenant for life will usually be treated as a trustee, which he is; but where he is beneficially entitled to the fee simple or the term of years subject only to equitable interests which will be overreached by his conveyance he should give an undertaking as well as an acknowledgment.

The operation and effect of such an acknowledgment and undertaking are defined by s. 64 of the L. P. Act, 1925.

CHAPTER IX.

Covenants.

As to Covenants running with the Land, restrictive Covenants, and implied Easements.

Benefit of covenants relating to land.

Formerly the benefit of covenants relating to land enured for the benefit of each successive transferee of the land provided he was in of the same estate as the original covenantee and that the original covenantee, when the covenant was made, had the land to which the covenant related;(*a*) after 1925 the benefit of such covenants will, without referring to the successors in title, enure for the benefit of all successors in title of the original covenantee, including in the case of restrictive covenants, the owners and occupiers of the land for the time being: L. P. Act, 1925, s. 78. But restrictive covenants (not being covenants between a lessor and lessee) made after 1925 must be protected by the registration of a land charge. The benefit may be made to run with the land without the use of any technical expression: *ib.*, s. 80. The benefit of all covenants for title: *ib.*, s. 76; and covenants for indemnity, implied under s. 77, run with the land.

Landlord and tenant.

Covenants, as between landlord and tenant, run with the land as to both burden and benefit when the covenant touches or concerns the thing demised, but covenants which are collateral and do not touch or concern the thing demised do not so run.(*b*) After 1925 it is not necessary that the covenant should extend to a thing *in esse* parcel of the demise: L. P. Act, 1925, s. 79.

Terre tenant.

In the case of a rentcharge the *terre* tenant is, independently of any covenant, liable to pay it.(*c*) After 1925, as a mortgagee

(*a*) *Spencer's Case*, 5 Co. Rep. 16a; Smith's L. C., 12th ed.; *Rogers* v. *Hoesgood* [1900], 2 Ch. 388; 69 L. J. Ch. 652; *Dyson* v. *Forster* [1909], A. C. 98; 78 L. J. K. B. 246. *Cf. Westhoughton U. D. C.* v. *Wigan C. & I. Co.* [1919], 1 Ch. 159; 88 L. J. Ch. 60,

(*b*) See cases collected in Smith's L. C., 12th ed., under *Spencer's Case* 62, *et seq.*; 1 Wolst. & Cherry, 11th ed., 52-54; *Ricketts* v. *Enfield Churchwardens* [1909], 1 Ch. 544; 78 L. J. Ch. 294; *Dewar* v. *Goodman* [1909], A. C. 72; 78 L. J. K. B. 209; *Lyle* v. *Smith* [1909], 2 Ir. R. 58.

(*c*) *Thomas* v. *Sylvester* (1873), L. R. 8 Q. B. 368; 42 L. J. Q. B. 237; *Re Herbage Rents* [1896], 2 Ch. 811; 65 L. J. Ch. 871; *Pertwee* v. *Townsend* [1896], 2 Q. B. 129; 65 L. J. Q. B. 659; *Foley* v. *Dudley Corporation* [1910], 1 K. B. 317; 79 L. J. K. B. 410.

can only take a term of years absolute or a legal charge: *Cundiff* v. *Fitzsimmons* [1911], 1 K. B. 513; 80 L. J. K. B. 422, will not apply, and he cannot be liable as *terre* tenant.

Burden of covenant will not run at law except as between landlord and tenant;

The burden of a covenant entered into by the owner of land cannot be made to run with it *at law*, so as to be enforceable against an assign of the covenantor, except in cases of landlord and tenant, or where the so-called covenant is in fact the grant of an easement.(*d*) In such a case it runs with the land without the use of any technical words, unless a contrary intention is expressed: L. P. Act, 1925, s. 80. The burden of a covenant relating to land may run with the land although the subject matter of the contract is not in existence when the contract was made and notwithstanding that the successors are not mentioned: s. 79.

nor in equity except where the covenants are restrictive or negative.

Equity will not interfere to enforce a covenant against persons who cannot be sued on it at law, unless it comes within the class of what are called restrictive or negative covenants, and in particular will not enforce against an assign of the covenantor a covenant to build, or repair, or insure, or do any act involving the expenditure of money.(*e*)

Breach of restrictive covenant will be prevented by injunction as against the assignee of covenantor with notice or where a land charge is registered.

But as regards restrictive or negative (*f*) covenants, *e.g.*, covenants not to build on land, or to use it only in a particular manner, where the covenantee retains or is interested in the land for the benefit of which the covenant was entered into,(*g*) equity will interfere by injunction against the original covenantor, or any person claiming under him, either as a volunteer or as purchaser for valuable consideration with notice of the covenant when made before 1926, or when made after 1925, if a land charge has been registered, including an underlessee or occupier,(*h*) to restrain him from doing any part which would be a breach of the covenant.(*i*) Generally a covenantee is entitled to an injunction without proving damage, but if the defendant

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(*d*) *Austerberry* v. *Oldham Corpn.* (1885), 29 Ch. D. 750; 55 L. J. Ch. 633; the L. P. Act, 1925, does not affect this decision.

(*e*) *Haywood* v. *Brunswick, &c., Co.* (1881), 8 Q. B. D. 403; 51 L. J. Q. B. 73; *L. & S. W. Ry. Co.* v. *Gomm* (1882), 20 Ch. D. 562; 51 L. J. Ch. 530; *Re Nisbet and Potts* [1905], 1 Ch., at p. 397; 74 L. J. Ch. 310; aff. [1906], 1 Ch. 386; 75 L. J. Ch. 238.

(*f*) See *Powell* v. *Hemsley* [1909], 2 Ch. 305; 78 L. J. Ch. 741.

(*g*) *L. C. C.* v. *Allen* [1914], 3 K. B. 642; 83 L. J. K. B. 1695.

(*h*) *Hall* v. *Ewin* (1887), 37 Ch. D. 74; 57 L. J. Ch. 95; *Mander* v. *Falcke* [1891], 2 Ch. 554; 61 L. J. Ch. 3; *Teape* v. *Douse* [1905], 92 L. T. 319.

(*i*) *Mann* v. *Stephens* (1846), 15 Sim. 377; *Tulk* v. *Moxhay* (1848), 2 Ph. 77; 18 L. J. Ch. 83; *Coles* v. *Sims* (1854), 5 D. M. & G. 1; 23 L. J. Ch. 258.

proves that no damage has been caused and gives an undertaking that will prevent future damage, then if the grant of an injunction would inflict damage on the defendant out of all proportion to the relief granted to the plaintiff the injunction will be refused: *Sharp* v. *Harrison* [1922], 1 Ch. 502; 91 L. J. Ch. 442. *Semble* the court has a discretion as to the grant of an injunction to restrain the breach of a restrictive covenant not made with the applicant: *Kelly* v. *Barrett* [1924], 2 Ch. 379; 94 L. J. Ch. 1. All restrictive covenants (not being covenants between a lessor and lessee) made after 1925 must be registered as land charges or purchasers of the legal estate will take free therefrom, notwithstanding notice thereof: L. C. Act, 1925, s. 10, Class D., s. 13. The owner of the land affected cannot protect himself (save where L. P. Act, 1925, s. 44 applies, overruling *Patman* v. *Harland* (1881), 17 Ch. D. 353; 50 L. J. Ch. 642) on the ground of want of notice by not investigating the title when the proper investigation of it would have disclosed the restrictive covenant ;(*j*) but if the covenant is made after 1925, and has not been registered as a land charge he will not be affected thereby. If the covenant was made before 1926 and before the statutory commencement of title a purchaser does not have constructive notice: L. P. Act, 1925, s. 44 (8).

Implied release.

A restrictive covenant may be released by reason of the surrender of an old lease and the grant of a new one if the lessor has no notice of a restrictive covenant affecting the lessee under the original lease: *Wilkes* v. *Spooner* [1911], 2 K. B. 473; 80 L. J. K. B. 1107.

Modification of restrictive covenants.

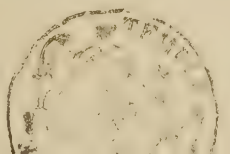
A restrictive covenant may be discharged or modified under L. P. Act, 1925, s. 84. Where this is done no compensation is payable unless the person entitled to the benefit of the restriction suffers damage in consequence of its discharge or modification.

Releases by persons in a fiduciary position.

A tenant for life, with the consent in writing of the trustees of the settlement, may release a restrictive covenant made for the benefit of the settled land: S. L. Act, 1925, s. 58 (2). Accordingly, trustees for sale (L. P. Act, 1925, s. 28) and personal representatives (Ad. of E. Act, 1925, s. 39) may also release such a covenant.

In framing restrictive covenants it is important that the respective lands which obtain the benefit and bear the burden

(*j*) *Wilson* v. *Hart* (1866), 1 Ch. 463; 35 L. J. Ch. 569; *Nicoll* v. *Fenning* (1881), 19 Ch. D. 258; 51 L. J. Ch. 166; *Re Nisbet and Potts* [1906], 1 Ch. 386; 75 L. J. Ch. 238; *Abbey* v. *Gutteres* [1911], 55 Sol. J. 364.



of them should be clearly defined, though under ss. 78–80 of the L. P. Act, 1925, the form of the covenants will be much simplified.

Whether benefit of, passes on alienation.

Restrictive covenants are generally intended to prevent some adjoining land belonging to the covenantee from being depreciated by the acts prohibited. If, therefore, no adjoining land is retained, as where a vendor sells the whole of his land to a single purchaser who enters into a restrictive covenant, or if the land, for the benefit of which the covenant is to be made, is sold before the conveyance containing the covenant is executed, such a covenant is merely personal and does not run with the land.(*k*) A restrictive covenant in gross is not enforceable against a purchaser, with notice, of the land affected: *L.C.C.* v. *Allen* [1914], 3 K. B. 642; 83 L. J. K. B. 1695. If, however, the covenantee retains some adjoining land and afterwards conveys to another the whole or part of the adjoining land, the benefit of the covenant will pass to the grantee unless it appears from the deed that it was not the intention of the parties that it should so pass.(*l*)

Where it is desired to enforce restrictive covenants, it is not necessary to prove either that they were intended to benefit any particular portion of the estate, or that they are in fact beneficial to the portion of the estate which is retained. All that is necessary is to prove that they were imposed for the benefit of the estate as a whole: *Northbourne* v. *Johnston* [1922], 2 Ch. 309; 92 L. J. Ch. 12.

Where there is building scheme, covenants are mutually enforceable.

Where there is a building scheme for the sale of an estate in lots according to some defined plan, and it is part of the arrangement that all purchasers shall enter into restrictive covenants for their mutual benefit, the covenants, though expressed to be entered into with the vendor only, will be mutually enforceable in equity by and against all persons who come in as purchasers under the scheme,(*m*) even if some of the lots are unsold at the first sale, and are afterwards sold subject to the same

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(*k*) *Formby* v. *Barker* [1903], 2 Ch. 539; 72 L. J. Ch. 716; *Milbourne* v. *Lyons* [1914], 2 Ch. 231; 83 L. J. Ch. 737.

(*l*) *Renals* v. *Cowlishaw* (1879), 11 Ch. D. 866; 48 L. J. Ch. 830; *Rogers* v. *Hosegood* [1900], 2 Ch. 388; 69 L. J. Ch. 59; *Nalder, &c., Co.* v. *Harman* [1900], 83 L. T. 257; *Osborne* v. *Bradley* [1903], 2 Ch. 446; 73 L. J. Ch. 49; *Hooper* v. *Bromet* [1904], 90 L. T. 234; *Long* v. *Gray* [1913], 58 Sol. J. 46; L. P. Act, 1925, ss. 77-79.

(*m*) See *Renals* v. *Cowlishaw* (1879), 11 Ch. D. 866; 48 L. J. Ch. 830; *Spicer* v. *Martin* (1888), 14 A. C. 12; 58 L. J. Ch. 309; *Elliston* v. *Reacher* [1908], 2 Ch. 665; 78 L. J. Ch. 87.

conditions ;(*n*) but where the covenants (not being covenants between lessor and lessee) are made after 1925, they must be registered as land charges. The essential requisites of a building scheme are definite reciprocal rights and obligations extending over a defined area.(*o*)

Question whether covenants are intended for mutual benefit of purchasers and vendor, or for vendor only, depends on the circumstances.

Whether there is a building scheme intended to be binding on all purchasers *inter se* is a question of fact depending on the language of the particulars and conditions of sale, and the other circumstances attending the sale. It is a material circumstance whether the sale comprises the whole of the vendor's estate in the particular place. If it does, the presumption would be that the covenants are intended for the benefit of each of the purchasers as against the others. If, on the other hand, a part of the property is not included in the sale, the *prima facie* inference would be that the covenants are for the protection of the vendor in respect of the retained land.(*p*)

Building scheme not to be presumed from preparation of plan and printed form of agreement.

A purchaser cannot assume the existence of a building merely because he is shown a plan, prepared by the vendor, showing plots with houses marked on them even if the agreement made by him in regard to any such plot is on a printed form containing restrictive stipulations.

Nor can he assume that each plot will be built on according to the plan, or will be subject to the stipulations expressed in the printed form.(*q*) Where the printed form of agreement, made before 1926, provided that the conveyance should contain a covenant by the purchaser not to erect additional buildings "without the consent in writing of the vendor, his heirs, or assigns," it was held that so long as a substantial part of the building estate remained unsold, the only consent required was that of the vendor himself, or of the persons deriving title under him to the unsold part.(*r*)

Covenant not to build without consent of vendor, his heirs or assigns, by whom enforceable.

The proper plan to be pursued to prevent all question.

In order to prevent all question, it is desirable where it is intended that covenants of this kind shall be enforceable not

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(*n*) *Whatman* v. *Gibson* (1838), 9 Sim. 196 ; 7 L. J. Ch. 160 ; *Rowell* v. *Satchell* [1903], 2 Ch. 212 ; 73 L. J. Ch. 20.

(*o*) *Reid* v. *Bickerstaff* [1909], 2 Ch. 305 ; 78 L. J. Ch. 753 ; *Spicer* v. *Martin*, *supra* ; *Kelly* v. *Barrett* [1914], 2 Ch. 379 ; 94 L. J. Ch. 1.

(*p*) *Nottingham, &c., Co.* v. *Butler* (1886), 16 Q. B. D. 778 ; 55 L. J. Q. B. 280 ; *Re Birmingham, &c. Co. and Allday* [1893], 1 Ch. 342 ; 62 L. J. Ch. 90.

(*q*) *Tucker* v. *Vowles* [1893], 1 Ch. 195 ; 62 L. J. Ch. 172 ; *Osborne* v. *Bradley* [1903], 2 Ch. 446 ; 73 L. J. Ch. 49 ; *Whitehouse* v. *Hugh* [1906], 2 Ch. 283 ; 75 L. J. Ch. 677.

(*r*) *Everett* v. *Remington* [1892], 3 Ch. 148 ; 61 L. J. Ch. 574. See *Mayner* v. *Payne* [1914], 2 Ch. 555 ; 83 L. J. Ch. 897.

only by the vendor, but also by all the purchasers *inter se*, either to have a general deed containing such covenants executed by the vendor and by each purchaser as he completes,(*s*) or to insert in the conveyance to each purchaser not only covenants by him with the vendor, but also a provision that he shall be entitled to the benefit of the similar covenants entered into by the other purchasers, and that, as regards any lots not already sold and conveyed, the same shall be subject to the like restrictions.

Notice of restrictive covenants by vendor should be indorsed on his title deed.

Where, on a sale, a purchaser does not obtain all the title deeds he should see that notice of any restrictive or other covenants entered into by the vendor is endorsed on some title deed retained by the vendor. This endorsement, under L. P. A., 1925, s. 200, does not take the place of registration of such covenats as a land charge.

Equity will not interfere when there has been delay amounting to acquiescence.

Equity will refuse to interfere to prevent a breach of restrictive covenants where there has been a material alteration of the state of the property by the party himself or those under whom he claims, or there has been such delay on the part of the covenantee in taking proceedings as to amount to acquiescence;(*t*) but change in the character of the neighbourhood is not in itself a sufficient defence,(*u*) though for the purposes of s. 84 of the L. P. Act, 1925, that factor is very material.

When purchaser must covenant with vendor

Whenever the vendor sells property subject to certain restrictions for the observance of which he is personally liable, and it is a part of the arrangement that the purchaser shall take the land subject to the same restrictions, the purchaser must enter into a covenant by way of indemnity with the vendor to abide by the same,(*v*) but no action will lie in respect of this covenant for indemnity unless the person entitled to

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(*s*) See *Elliston* v. *Reacher* [1908], 2 Ch. 665; 78 L. J. Ch. 87, where the purchasers were bound though the deed was not actually executed. See *Sharp* v. *Harrison* [1922], 1 Ch. 502; 91 L. J. Ch. 442.

(*t*) *Bedford* v. *British Museum* (1822), 2 Myl. & K. 552; 2 L. J. Ch. 129; *Sayers* v. *Collyer* (1884), 28 Ch. D. 103; 54 L. J. Ch. 1; *Knight* v. *Simmonds* [1896], 2 Ch. 294; 65 L. J. Ch. 583; *Sobey* v. *Sainsbury* [1913], 2 Ch. 513; 83 L. J. Ch. 103. Waiver is assumed from long acquiescence: *Hepworth* v. *Pickles* [1900], 1 Ch. 108; 69 L. J. Ch. 55.

(*u*) *Osborne* v. *Bradley* [1903], 2 Ch. 446; 73 L. J. Ch. 49; *Pulleyne* v. *France* [1913], 57 Sol. J. 173; see *Sharp* v. *Harrison* [1922], 1 Ch. 502; 91 L. J. Ch. 442.

(*v*) *Moxhay* v. *Inderwick* (1847), 1 De G. & S. 708; *Re Poole and Clarke* [1904], 2 Ch. 173; 73 L. J. Ch. 612. See also *Re Cooper and Crondace* [1904], 90 L. T. 258; *Harris* v. *Boots* [1904], 2 Ch. 376; 73 L. J. Ch. 708.

the benefit of the covenant takes steps to enforce the restriction: *Reckitt* v. *Cody* [1920], 2 Ch. 452; 90 L. J. Ch. 27.

Remedy of covenantee where land purchased under Lands C. Act.

A company or public body purchasing land, whether by agreement or compulsion, under the powers of the Lands C. Act, 1845, is not bound by a restrictive covenant, the enforcement of which would be inconsistent with the public purpose for which the purchase is made, but the covenantee is entitled to compensation under s. 68 of that Act;(*w*) while the land is held for public purposes the covenant is in abeyance: *Ellis* v. *Rogers* (1885), 29 Ch. D. 661. Where a public body acquires part of a leasehold site they are not entitled to commit breaches of any covenant in the lease: *Piggott* v. *Middlesex C. C.* [1909], 1 Ch. 134; 77 L. J. Ch. 813.

Registered land.

Mere registration of notice of restrictive covenants under the L. R. Act, 1925, s. 50, does not annex them to the land so as to make them enforceable against subsequent purchasers or the original vendor if there is no "building scheme": *Willé* v. *St. John* [1910], 1 Ch. 325; 79 L. J. Ch. 239; but registration of such a notice takes the place of registration of a land charge.

Mortgagee, L. P. Act, 1925, s. 101.

A mortgagee selling under his statutory power can under the L. P. Act, 1925, s. 101, impose restrictive covenants upon the unsold parts of the mortgaged property if the mortgage was made after 1911, or the power originally conferred by Conv. Act, 1911, s. 4, has been made applicable to a mortgage made before 1912.

Implied Easements.(*x*)

Coveyance to purchaser passes apparent and continuous easements.

A conveyance of land passes all easements legally appurtenant to it. Where the vendor is the owner of and retains the adjoining land, the conveyance will also pass by force of the L. P. Act, 1925, s. 62, or even without the aid of that section, such apparent and continuous easements over the land retained as are necessary for the enjoyment of the right granted or to give effect to the common intention as to the purpose for which the land is to be used,(*y*) and have been, and at the time of conveyance are, used and enjoyed by the vendor for the benefit of

Derogation from grant.

(*w*) *Kirby* v. *Harrogate School Board* [1896], 1 Ch. 437; 65 L. J. Ch. 376; *Long Eaton, &c., Co.* v *Mid. Ry.* [1902], 2 K. B. 574; 71 L. J. K. B. 837.

(*x*) See Gale on Easements, 10th ed., p. 113, *et seq.*

(*y*) Per Lord Parker in *Pwllbach* v. *Woodman* [1915], A. C. 646; 84 L. J. K. B. 874; see also *Lewis* v. *Meredith* [1913], 1 Ch. 571; 82 L. J. Ch. 255.

that property. The doctrine is founded on the principle that a grantor cannot derogate from his own grant.(*z*)

When an easement of light passes to a purchaser.

In accordance with this doctrine, a conveyance to a purchaser of a house, which has windows overlooking land retained by the vendor, passes by implication an easement of light, which precludes the vendor from building on the land so as to obscure the light.

Right of way over land retained by vendor.

A conveyance of land, the ordinary and only convenient access to which is over the land retained by the vendor, passes a right of way over that land, though the way is not of necessity : *Hansford* v. *Jago* [1921], 1 Ch. 322 ; 90 L. J. Ch. 129. But it is always a question depending on evidence whether there is an apparent easement or not. If the owner of two closes, A. and B., is in the habit of using a road over A. to go to B., this user is *prima facie* for his own convenience while owner of both, which convenience will cease to exist when the ownership is severed ; a right to use the road would not pass by a conveyance of close B. to a purchaser, unless it could be shown that there was no other reasonably convenient access thereto, or that there are other circumstances from which it might be inferred that the road was used as an appurtenance to B., and not as a mere incident of the joint ownership.(*a*) Generally it may be said that in order to establish an apparent easement over land retained by a vendor for the benefit of property conveyed to a purchaser, it must be shown that the user on which the claim is founded has taken place under circumstances affording a reasonable expectation that it will be continued after the ownership is severed.(*b*)

No implied reservation of an easement to grantor.

As a general rule there is no implied reservation of an easement in favour of the grantor for the benefit of the property retained by him corresponding to that which arises in favour of the grantee for the benefit of the property conveyed, except in the case of an easement of necessity, or where there is evidence

(*z*) *Kay* v. *Oxley* (1875), L. R. 10 Q. B. 360 ; 44 L. J. Q. B. 210 ; *Bayley* v. *G. W. Ry. Co.* (1884), 26 Ch. D. 434 ; *Broomfield* v. *Williams* [1897], 1 Ch. 602 ; 66 L. J. Ch. 305 ; *Pollard* v. *Gare* [1901], 1 Ch. 834 ; 70 L. J. Ch. 404 ; *International Tea Stores Co.* v. *Hobbs* [1903], 2 Ch. 165 ; 72 L. J. Ch. 543 ; Gale, 8th ed., 108, *et seq.* *Cf. Long* v. *Gowlett* [1923], 2 Ch 177 ; 92 L. J. Ch. 530. Doctrine explained in *Harmer* v. *Jumbil Tin Areas Ld.* [1921], 1 Ch. 200 ; 90 L. J. Ch. 140. Goddard, 7th ed., 146.

(*a*) *Thomson* v. *Waterlow* (1868), 6 Eq. 36 ; 37 L. J. Ch. 495 ; as explained in *Kay* v. *Oxley*, *supra*.

(*b*) *Birmingham, &c., Banking Co.* v. *Ross* (1888), 38 Ch. D. 295 ; 57 L. J. Ch. 601. See also *Betts* v. *Pickfords* [1906], 2 Ch. 87 ; 75 L. J. Ch. 483 ; *Morgan* v. *Fear* [1907], A. C. 425 ; 76 L. J. Ch. 660.

of a common intention : *Cory* v. *Davies* [1923], 2 Ch. 95 ; 92 L. J. Ch. 261. If, therefore, an owner of a house, and of land overlooked by the house, sells and conveys the land, but retains the house, he cannot prevent the purchaser from building on the land so as to obstruct the light to the house.(*c*) If, however, in the latter case the land and house had been sold contemporaneously to different purchasers (each purchaser being aware of the conveyance to the other), the purchaser of the house would be entitled to an easement of light as against the purchaser of the land;(*d*) but where the easement is not continuous or apparent, contemporaneous sales to different purchasers will not pass a right unless previous user, however precarious, can be proved or the right is one of necessity : *Long* v. *Gowlett* [1923], 2 Ch. 177 ; 92 L. J. Ch. 530. The same rule applies to devises by Will of the land and house to different persons,(*e*) and to a partition : *Nicholls* v. *N.* [1899], 81 L. T. 811. But there will be no partitions after 1925, though trustees for sale can allot land between the persons entitled to the proceeds : L. P. Act, 1925, s. 28.

Secus to contemporaneous purchaser.

An easement of necessity means an easement without which the property retained cannot be used at all, and not one merely necessary to its convenient enjoyment.(*f*)

What is an easement of necessity.

A legal easement can only be held for an interest equivalent to a fee simple or for a term of years absolute (L. P. Act, 1925, s. 1) ; and must be annexed to some land : *ib.*, s. 187.

Legal easements.

Other easements, rights and privileges are treated as equitable easements and when created after 1925 must be registered as land charges : L. C. Act, 1925, ss. 10, Class D. ; 13 (2).

Equitable easements.

A legal easement can be reserved in the manner prescribed by L. P. Act, 1925, s. 65.

Reservation of easements.

(*c*) *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31 ; 48 L. J. Ch. 853 ; *Ray* v. *Hazeldine* [1904], 2 Ch. 17 ; 73 L. J. Ch. 537.

(*d*) *Allen* v. *Taylor* (1880), 16 Ch. D. 355 ; 50 L. J. Ch. 178 ; *Hansford* v. *Jago* [1921], 1 Ch. 322 ; 90 L. J. Ch. 129.

(*e*) *Phillips* v. *Low* [1892], 1 Ch. 47 ; 61 L. J. Ch. 44 ; *Schwann* v. *Cotton* [1916], 2 Ch. 459 ; 85 L. J. Ch. 689.

(*f*) *Union L. Co.* v. *London G. D. Co.* [1902], 2 Ch. 557 ; 71 L. J. Ch. 791 ; *Browne* v. *Flower* [1911], 1 Ch. 219 ; 80 L. J. Ch. 181 ; see also *Titchmarsh* v. *Royston Water Co.* [1899], 81 L. T. 673.

CHAPTER X.

Mines and Minerals.

Conveyances of land without Mines, or of Mines without surface, and the mutual rights and obligations of the owners of the Mines and of the surface in such cases.

Conveyance of land *prima facie* passes the mines.

A CONVEYANCE of land passes not only the surface, but also all mines and minerals under the surface belonging to the grantor, unless the contrary is expressed in the deed, or unless the conveyance is made under the provisions of some statute which expressly excludes them.(*a*) This now applies in the case of transfers of registered land (L. R. Act, 1925, s. 3 (viii)), unless the register shows that all or any of the minerals are excepted. But, unless a note is entered on the register that the mines or minerals are included in the title, no guarantee is given: *ib.*, s. 83 (5).(*b*) A compensation agreement, made on the extinguishment of manorial incidents, will not pass the lord's rights to the minerals unless they are expressly mentioned.

Meaning of "minerals" or "mines and minerals" in a grant or exception.

A grant or exception in a deed of "minerals," or of "mines and minerals," includes all such substances as can be got from underneath the surface of the earth, and have a use and value of their own independent of and separable from the rest of the soil, without any reference to the mode of working them, unless the context or the nature of the transaction requires a more limited interpretation: *Johnstone* v. *Crompton* [1899], 2 Ch. 190; 68 L. J. Ch. 559. For the new method of reserving legal rights to work, see L. P. Act, 1925, s. 65, 5th Sch., Form No. 6.

Meaning of "mines."

The word "mines" taken alone signifies primarily underground excavations for the purpose of getting minerals, but its meaning may be extended by the context to all strata or beds in which minerals lie, however workable.(*b*) Thus, china clay

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(*a*) See *Mitchell* v. *Mosley* [1914], 1 Ch. 438; 83 L. J. Ch. 135.

(*b*) *Bell* v. *Wilson* (1866), 1 Ch. 303; 35 L. J. Ch. 337; *Greville* v. *Hemingway* [1902], 87 L. T. 443.

underlying land purchased by a railway company and occupying only a small portion of the subsoil is a "mineral" within the meaning of s. 77 of the R. C. C. Act, 1845,(*c*) but sandstone is not.(*d*)

China clay

It is a question of construction whether an exception of mines is an exception of the strata, so as to leave the grantor in the ownership of those strata as a separate tenement which he may use for any purpose he thinks fit, *e.g.*, to make a road through them for the conveyance of the produce of adjoining mines: *Hamilton* v. *Graham* (1871), 2 H. L. (Sc.) 166; or an exception only of the minerals, in which case the grantor has a right to get the minerals, but not to use the strata in which they are for any other purpose: *Ramsay* v. *Blair* (1876), 1 A. C. 701.

Whether an exception of mines carries the ownership of the strata or an easement only, a question of construction.

A grant or exception of minerals carries with it the right to work them by sinking pits and shafts and putting up the necessary machinery, and to enter upon and use so much of the surface vested in the grantor as is necessary and reasonable for that purpose, but does not entitle the mine owner to destroy or seriously injure or let down the surface, unless such a power is reserved expressly or by necessary implication.(*e*)

Exception of minerals includes right to work them.

If the owner of land grants to another a right to get the minerals, this will not be deemed to confer an exclusive right, unless the language is clear and explicit. Where the right is not exclusive, the owner of the land has a right to work them, so long as he does not disturb the grantee in any working which he is carrying on at the time: *Sutherland* v. *Heathcote* [1892], 1 Ch. 475; 61 L. J. Ch. 248.

Grant of right to get minerals does not prevent owner of land from working them also.

Where the ownership of the mines is separate from that of the surface, *prima facie* the mine owner is bound to leave sufficient support for the surface, and a grant or reservation of express power to work and get the minerals, and for that purpose to sink shafts, &c., making compensation for damage to the surface, does not of itself relieve the mine owner from the obligation to support the surface, because sufficient effect may be given to the compensation clause by holding it to apply to damage

Right of owner of surface to support from the subjacent or adjacent mines,

(*c*) *G. W. Ry. Co.* v. *Carpalla, &c., Co.* [1910], A. C. 83; 79 L. J. Ch. 117.

(*d*) *N. British Ry.* v. *Budhill Coal, &c., Co.* [1910], A. C. 116; 79 L. J. P. C. 31; and see as to freestone, *Symington* v. *Caledonian Ry. Co.* [1912], A. C. 87; 81 L. J. P. C. 155.

(*e*) *Hext* v. *Gill* (1872), 7 Ch. 699; 41 L. J. Ch. 761; and see *Hayles* v. *Pease* [1899], 1 Ch. 567; 68 L. J. Ch. 222.

may be precluded by terms of deed.

caused by the sinking of the shafts and other surface works authorised by the deed.(*f*) But if it appears clearly on the face of the instrument that the grant of the mines is intended to carry with it the right so to work them as to cause a subsidence, there is nothing illegal in such a grant, and it is in every case a question of construction whether this is or is not the intention of the deed.(*g*) Thus, in a case where, on a grant of land for the erection of a cotton mill, there was an exception and reservation of all the mines and minerals, with power to take the same at pleasure, but without entering upon the surface, so that compensation be made for all damage to the buildings by the exercise of any of the excepted powers, it was held that the mine owner might work so as to injure the buildings, because, as he was restrained from entering on the surface, the damage contemplated by the compensation clause must be damage by subsidence.(*h*)

The right to cause subsidence may be granted by necessary implication.

Where mining cannot be carried on commercially without causing subsidence the right to work necessarily implies the right to let down the surface. It was held in *Welldon* v. *Butterley Colliery Company* [1920], 1 Ch. 130; 88 L. J. Ch. 496, that subsidence in some degree inevitably results from all methods of mining; it is conceived that this decision is right, but as it has been dissented from in *Consett I. P. Society* v. *Consett Iron Co.* [1922], 2 Ch. 135; 91 L. J. Ch. 630, the practice of expressly conferring a right to let down the surface should be maintained.

Lessee's liability for subsidence.

A lessee of mines or an owner of minerals is not liable to the owner of the surface for damage by subsidence happening after he entered into possession, but caused by the acts of a predecessor

(*f*) *Butterknowle Colly. Co.* v. *Bishop Auckland, &c., Co.* [1906], A. C. 305, 75 L. J. Ch. 541. As to the rights of the lord of a manor under an Inclosure Act which granted the soil to the tenants of the manor, but did not reserve mines or minerals: see *Thomson* v. *St. Catharine's College Cambridge* [1919], A. C. 468; 88 L. J. K. B. 163; *Cf. Welldon* v. *Butterley Co.* [1920], 1 Ch. 130; 88 L. J. Ch. 496; *Consett I. P. Society* v. *Consett Iron Co.* [1922], 2 Ch. 135; 91 L. J. Ch. 630.

(*g*) *Rowbotham* v. *Wilson* (1860), 8 H. L. C. 348; 30 L. J. Q. B. 49; *Beard* v. *Moira Colliery Co.* [1915], 1 Ch. 257; 84 L. J. Ch. 155; *Davies* v. *Powell Duffryn Co.* [1917], 1 Ch. 488; 86 L. J. Ch. 298.

(*h*) *Aspden* v. *Seddon* (1875), 10 Ch. 394; 44 L. J. Ch. 359; *Love* v. *Bell* (1884), 9 A. C. 286, 299; 53 L. J. Q. B. 257; see also *Butterley Co.* v. *New Hucknall Co.* [1910], A. C. 381; 79 L. J. Ch. 411; and see articles, 53 Sol. J. 42, 54, *ib.*, 436; *Jones* v. *Consol. Anthracite* [1916], 1 K. B. 123; 85 L. J. K. B. 465.

in title done before the date of such entry.(*i*) But where there is a structure to be maintained the present owner will be liable for subsidence caused through the structure becoming inadequate(*j*).

Tenant for life and other fiduciary owners.

Under S. L. Act, 1925, s. 41, a tenant for life may grant a lease with power to let down the surface;(*k*) and may generally deal separately with surface and minerals (*ib.*, s. 50) ; the same powers are exercisable by trustees for sale and by personal representatives.

Trustee.

A trustee selling under a trust for sale may sell the land without the mines and minerals or the mines and minerals without the land, or may sell any stratum separately : S. L. Act, 1925, s. 50 ; L. P. Act, 1925, s. 28, independently of T. Act, 1925, s. 12.

Mortgagee's power of sale : L. P. Act, 1925, s. 101.

Acquisition of compulsory powers to work minerals.

The L. P. Act, 1925, s. 101, enables a mortgagee, where the mortgage is made after 1911 under his statutory power of sale to sell the mortgaged property reserving the mines or the minerals apart from the surface. Where there is a danger of minerals being left permanently unworked by reason of any restriction or reservation imposed by the instrument or tenure by which they are held, or they cannot be worked without the concurrence of two or more persons, or they are owned in such small quantities that they cannot be properly or conveniently worked by themselves, any person interested may obtain the necessary powers of working such minerals by the means provided in Pt. I of the Mines (Working Facilities) Act, 1923.

Powers of railway companies under the Railway Clauses Consolidation Act, 1845, ss. 78 to 85, as amended by the Mines (Working Facilities) Act, 1923, Pt. II.

This Act also enables any person interested in land not entitled to support to obtain such rights of support as are necessary. Under ss. 78 to 85 of the R. C. C. Act, 1845, railway companies had certain powers to prohibit mining operations which they apprehended would cause damage to the railway

These sections have now been repealed as respects certain railways by s. 15 of the Mines (Working Facilities and Support) Act, 1923, Pt. II, and similarly numbered sections have been substituted.

(*i*) *Greenwell* v. *Low Beechburn Coal Co.* [1897], 2 Q. B. 165 ; 66 L. J. Q. B. 643 ; *Hall* v. *Norfolk* [1900], 2 Ch. 493 ; 69 L. J. Ch. 571.

(*j*) *A.-G.* v. *Roe* [1915], 1 Ch. 235 ; 84 L. J. Ch. 322; see also *Manley* v. *Burn* [1916], 2 K. B. 121 ; 85 L. J. K. B. 505.

(*k*) *Sitwell* v. *E. of Londesborough* [1905], 1 Ch. 460 ; 74 L. J. Ch. 254 ; and see *Markham* v. *Paget* [1908], 1 Ch. 697 ; 79 L. J. Ch. 451.

These sections effect the same purpose as those in the Act of 1845, but are more explicit as to the dangerous area, and, as to the compensation payable, they remedy certain inequalities in the Act of 1845. The new sections apply to every Act or Order relating to railways which incorporates the Act of 1845 and is made after the 17th July, 1923.

Section 16 of the Mines (Working Facilities and Support) Act, 1923, applies certain of the new provisions to Acts and Orders made before that date, while s. 17 adapts the Act to Scotland.

The new provisions do not apply to Ireland.

CHAPTER XI.

Completion of Purchase.

A VENDOR is bound to get in at his own expense any outstanding legal estate: *Re Adams and Frost* [1907], 1 Ch. 695; 76 L. J. Ch. 408. And any agreement to the contrary is void: L. P. Act, 1925, s. 42. If it appeared that a legal estate which had not been actually got in began to be outstanding many years ago the question arose whether it had not ceased to be subsisting under the operation of the Lim. Acts, 1833 and 1874. If the relation between the holders of the legal and beneficial estates had been that of trustee and beneficiary upon an express trust, or of mortgagee and mortgagor, no length of possession by the beneficial owner would have barred the legal right of the legal owner, the case being within the exception at the end of s. 7 of the Act of 1833. But if the legal owner had not been an express trustee or mortgagee, or had ceased to be such, the beneficial owner would have been a tenant at will within the meaning of that section, and would have acquired a good legal title at the end of thirteen years from the time when the tenancy at will began: Lim. Acts, 1833, s. 7, and 1874, s. 1. In a case where a legal mortgage was paid off but no reconveyance was executed, it was held that the mortgagee was neither an express trustee nor a mortgagee after the money was paid, hence that his legal right was extinguished at the end of thirteen years from that time: *Sands to Thompson* (1883), 22 Ch. D. 614; 52 L. J. Ch. 406. After 1925 the mortgage term would cease; L. P. Act, 1925, s. 116, the legal estate would be vested in the mortgagor without the aid of the Limitation Acts.

As to outstanding legal estate.

Mortgage paid off.

Independently of the operation of the above Acts, a conveyance of the legal estate will be presumed where there have been dealings by the equitable owner inconsistent with the supposition of the legal estate being outstanding, as where the property has been sold, mortgaged, and settled from time to time without any notice having been taken of the outstanding legal estate, or where the property has been dealt with in such a manner as to lead to the inference that the legal estate must have been at the time in the beneficial owner,(*a*) or where the legal estate has

When a conveyance of the legal estate will be presumed.

(*a*) *Noel* v. *Bewley* (1829), 3 Sim. 103; *Emery* v. *Grocock* (1821), 6 Madd. 54; see also *Re Bridgwater* [1910], 2 Ch. 342; 79 L. J. Ch. 746.

been directed to be conveyed to a particular person at a particular time, and a long time has elapsed since the conveyance ought to have been made, and the person to whom it ought to have been made has been in possession the whole time: *Hillary* v. *Waller* (1806), 12 Ves. 239; and this principle has been applied to a settlement of an equitable interest: *Re Harper's Settlement* [1919], 1 Ch. 270; 88 L. J. Ch. 245.

Legal Estates and Satisfied Terms.

Effect of L. P. Act, 1925, on legal estates.

But on the 1st January, 1926, all outstanding legal estates will have been got in by the operation of the 1st Sch. of the L. P. Act, 1925, and 2nd Sch. of S. L. Act, 1925, as explained in Chapter I, with the result that the question whether a legal estate has been obtained under the Lim. Acts, or under a presumed grant, will be confined to cases, which ought seldom to occur, arising after that date. The fact that mortgages can only be made by charge by way of legal mortgage, or by demise or sub-demise, and that mortgage terms when satisfied will automatically cease, will reduce the occasions in which legal estates can be overlooked. Moreover, as every vendor will be bound to satisfy his purchaser as to the title to the legal estate, mistakes will not be allowed to remain unrectified. The mistakes are less likely to occur, for words of limitation are no longer required to pass the fee simple.

Satisfied terms.

It was formerly the practice on a purchase, when it appeared that the property was subject to a term of years created for purposes which had become satisfied, to keep the term alive by assigning it to a trustee for the purchaser to attend the inheritance and protect it from mesne incumbrances. This practice was put an end to by the Satisfied Terms Act, 1845 (now repealed), which in effect enacted that (with an exception intended to protect existing interests) all terms of years which by express declaration or construction of law should on the 31st day of December, 1845, be attendant on the inheritance, or which becoming satisfied after that date should either by express declaration, or by construction of law, become attendant on the inheritance, should absolutely cease and determine. The Act extended to freeholds and such customary lands as passed by deed, or deed and admittance, and not by surrender: ss .2, 3.

Act for dispensing with their assignment.

Modern law as to satisfied terms.

The modern law as to satisfied terms will now be found in the L. P. Act, 1925, ss. 5, 116; 1st Sch., Pt. II, para. 1. Under these provisions, as explained in Chapter 1, all terms, whether having

a freehold or leasehold reversion, will cease when the purposes thereof are satisfied, and where the purposes are satisfied as respects part of the land comprised in a term, then that term will cease in regard to that part. It thus becomes impossible to keep alive a satisfied term by assignment or otherwise.

Attestation.

Right of purchaser as to attestation of conveyance.

A purchaser is not entitled to require that the conveyance be executed in his presence or in that of his solicitor as such, but he may at his own cost have its execution attested by some person appointed by him, who may, if he thinks fit, be his own solicitor : L. P. Act, 1925, s. 75.

Costs.

Costs of conveyance.

Where there is no stipulation on the subject of expenses the costs of the conveyance and of all matters relating thereto must be borne by the purchaser, but the expense attendant on the execution and examination of the deed by or on account of the conveying parties must be paid by the vendor: Dart, 7th ed., 714; L. P. Act, 1925, s. 45 (4).

Registered land.

In the case of registered land, the costs as between vendor and purchaser are regulated by L. R. Act, 1925, s. 110.

Expense of discharging incumbrances.

If the property is subject to incumbrances at the date of the contract, they must either be discharged or surrendered separately, at the vendor's expense, or if they are surrendered in the conveyance, the expenses of the purchase deed, so far as they are increased by the concurrence of the incumbrancer in the same deed, must be borne by the vendor.(*b*) A purchaser was not entitled to throw such expense on the vendor when mortgage debts were kept on foot for the purchaser's protection: Dart, 7th ed., 723, 724. It will seldom now be practical to keep alive a mortgage debt save when it is paid off by a limited owner out of his own money: L. P. Act, 1925, s. 116; or a transfer is taken, not for the purpose of enabling the mortgagor to set up the debt as against his subsequent incumbrancers.

Stamps.

The cost of stamping a conveyance is borne by the purchaser.

Employment of Solicitor.

Employment of solicitor.

Stipulations, preventing a purchaser, lessee or underlessee from employing his own solicitor, in relation to the conveyance, are rendered void by L. P. Act, 1925, s. 48.

(*b*) Sug., 14th ed., 488; *Reeves* v. *Gill* (1838), 1 Beav. 375; L. P. Act, 1925, ss. 42, 43 and 45.

CHAPTER XII.

Compulsory Sales of Land.

How compulsory powers to acquire land may be obtained.

Compulsory powers to acquire land may be obtained by special Act or by a provisional order, or certificate, pursuant to a general Act, which must be confirmed by the authority, generally a government department, specified in the Act in question : see table of general Acts relating to the compulsory powers, at the end of this chapter.

The Lands Clauses Acts, 1845 to 1895.

The Lands Cl. Act, 1845, was designed to incorporate in one Act all the terms formerly enacted in special Acts enabling land to be compulsorily acquired. This Act has been amended by the Lands Cl. Acts, 1860, 1869, 1883 and 1895 (together referred to as the Lands C. Acts, 1845 to 1895), the Acquisition of Land (Assessment of Compensation) Act, 1919, the Mines (Working Facilities and Support) Act, 1923, the L. P. Act, 1925, s. 42 (7) (title to be made without payment into court), and the S. L. Act, 1925, ss. 58 (3), 76.

All the provisions and clauses of the Act of 1845, as amended unless excluded, apply to and are incorporated in every special Act authorising an undertaking of a public nature to acquire land by compulsion and passed after the 8th May, 1845.

Arrangement of clauses.

The clauses of the Act of 1845 are arranged in sixteen groups and nine independent clauses ; each group or clause forming a separate enactment and being headed by words indicative of the subject-matter of the group or clause. Groups and clauses are incorporated in or excluded from a special Act by means of these headings ; hence if a special Act incorporates the Lands C. Acts except in respect to " intersected lands," clauses 93. 94 will be excluded : Lands C. Act, 1845, s. 5.

Construction of Acts.

Where the words used in a special Act to include or exclude a group or clause differ from the appropriate statutory heading in any material respect, effect will be given to the words in the special Act.(*a*)

In construing the incorporated provisions of the Lands C. Acts with those of a special Act, the provisions of the former are to

(*a*) *Broadbent* v. *Imperial Gas Light Co.* (1857), 7 De G. M. & G., at 447 ; 26 L. J. Ch. 276 ; *Kirby* v. *Harrogate Sch. B.* [1896], 1 Ch. 437 ; 65 L. J. Ch. 376.

be followed unless expressly or necessarily varied by the latter. Where, owing to the terms of a special Act being inapplicable to any of the terms of the Lands C. Acts, a variation from the latter Acts is implied, the variation only extends to the particular subject to which the special Act relates.(*b*)

Supplementary Conditions.

Besides the provisions relating to the acquisition of land and payment of compensation, certain conditions and restrictions have been imposed on the application of the Lands C. Acts.

Promoters' liability as respects land tax and poor rate.

By the Act of 1845, s. 153, the promoters of an undertaking acquiring land charged with land tax, or liable to be assessed for poor rate, must, until the works are completed and assessed under the charge, or rate, make good any deficiency caused by the acquisition of such land for the purposes of those works. The method of calculation of this deficiency is provided for in this section.

Access to special Act.

All persons interested must have access to the special Act in the manner directed by ss. 150, 151.

Restrictions on taking part of premises.

By the Act of 1845, s. 92, the promoters may not take part of a building where the owner is able and willing to sell the whole.

Restriction on entry by the promoters before payment of compensation.

By s. 89 the promoters of the undertaking may not enter on the land, without the owner's consent, until the compensation money has been paid or applied in accordance with the statutory provisions.

Capital of undertaking must be fully subscribed.

Before the promoters of an undertaking may acquire land compulsorily the whole of the capital must be subscribed or contracted to be subscribed: Lands C. Act, 1845, s. 16.

Procedure to acquire Land.

Notice to treat.

When the promoters desire to acquire land under any compulsory powers, and after the preliminary conditions have been fulfilled, they must serve with a notice to treat all persons owning, occupying, or otherwise interested in the land: Lands C. Act, 1845, s. 18.

Service of notice.

This notice must be served within three years after the passing of the special Act or within the time specified in that Act: Lands C. Act, 1845, s. 123.(*c*)

(*b*) *R.* v. *London Corporation* (1867), L. R. 2 Q. B. 292; *Metro. District Rail. Co.* v. *Sharpe* (1880), 5 A. C. 425; 50 L. J. Q. B. 14.

(*c*) See *Goldsmiths Co.* v. *West Metro. Rail. Co.* [1904], 1 K. B. 1; 72 L. J. K. B. 931.

Contents of notice to treat.

The notice must specify the land proposed to be taken, the amount of compensation proposed to be paid, and contain a demand that every person interested should inform the promoters as to the exact nature of their interest: Lands C. Act, 1845, s. 18.

Service of notice in absence of interested persons.

Where possible a notice to treat must be served personally on the owner of the land at his last known place of abode, but if he is abroad, or, after careful search cannot be found, it may be served personally on the occupier; if there is no occupier it must be fixed to a prominent place on the land: Lands C. Act, 1845, s. 18.

Effect of notice to treat.

The relation of vendor and purchaser, between the parties, does not arise until after the compensation has been ascertained, but after notice to treat has been served no further contract is required, the vendor is entitled to have the compensation ascertained and the purchase completed.

Registration of land charge.

This is a legal right and binds all persons claiming under the parties, whether with notice of service or not,(*d*) but to prevent disputes a notice to treat should be treated as an "estate contract" and a land charge registered in respect of it: Land Charges Act, 1925, s. 10, Class C. (iv).

Matters relating to Compensation.

Procedure on failure to agree as to compensation.

Where the parties have failed to agree as to the compensation and the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, do not apply, the amount may be fixed by award or settled by arbitration.

Award of compensation.

If the amount claimed is under £50 the award may be made by two justices, if over £50 by a jury or by arbitration, at the option of the party making the claim: ss. 22, 24.

Provisions as to arbitration.

Where arbitration is desired the party claiming must signify his desire before the promoters have issued their warrant to the sheriff to summon a jury: s. 23.

Reference of disputed compensation to an umpire.

If the arbitrators fail to make their award within twenty-one days the matter must go to an umpire for his decision: s. 31. This umpire is appointed in the manner directed by s. 28.

Assessment of compensation where injured party is absent, unknown, or does not appear.

Where any person interested in lands affected by a compulsory sale is absent, unknown, or does not appear, the amount of the

(*d*) See Jepson's Lands Clauses Acts, 2nd ed., pp. 8, 98-101, and the cases there cited; also Halsbury's Laws of England, Vol. 6, p. 66, and the current supplement.

compensation will be fixed by the valuation of an able practical surveyor appointed by two justices : ss. 58-60.

The cost of this valuation is borne by the promoters of the undertaking : s. 62.

The promoters are obliged to keep the certificate of valuation and the nomination and declaration of the valuer, and to produce them on demand of the owner or other person interested in the land : s. 61.

Provisions as to compensation contained in the Acquisition of Land (Assessment of Compensation) Act, 1919.

The Acquisition of Land (Assessment of Compensation) Act, 1919, s. 1, provides that where, by any statute, land is authorised to be acquired compulsorily by any local or public authority or government department, the amount of compensation is to be assessed by one of a panel of official arbitrators appointed by a reference committee constituted under that Act.

Section 2 enacts rules for the assessment of the compensation which may be summarised as follows :—

Rules as to assessment of compensation.

No compensation is payable in respect of the compulsory nature of the sale, but the vendor is entitled to the fair market price on the value of the property for any purpose not requiring statutory authority, and, in certain cases, to the cost of reinstatement elsewhere.

Effect of Acquisition of Land (Assessment of Compensation) Act, 1919, on existing Acts.

As to the effect of this Act upon Acts, such as the Housing Act, 1925, and the Defence of the Realm Act, 1916, which provide specially as to compensation, see s. 7.

Matters relating to Completion.

Application of compensation in disability cases.

Where any person entitled to compensation is under any disability the compensation money, if over £200, had to be paid into the Bank of England to the account of the Paymaster-General, the successor of the Accountant-General.

Where it was under £200 and over £20, it was payable to the bank or two trustees nominated in writing by the persons entitled to the rents and profits of the land. But if it was under £20 the compensation was payable direct to the person entitled to the rents and profits: Lands C. Act, 1845, ss. 69-72.

Disabilities removed.

By paragraph 2 of the 9th Sch. to the L. P. (Amendment) Act, 1924, the Lands C. Acts and other statutes giving powers to make title in case of persons under disability, are to take effect as if the references to the disabilities which have been removed had been omitted.

Infants.

For instance, no disability to make title arises by reason of infancy, for during the minority the statutory owners or personal representatives in whom the legal estate in the land is vested will make title (S. L. Act, 1925, ss. 1 (1), (2), (3), 26; 2nd Sch., para. 2); save where the infant is beneficially entitled to a legal estate with a person of full age, when title will be made by the trustees for sale: L. P. Act, 1925, s. 19; 1st Sch., Pt. III. If the infant is entitled for life with another person of full age, the latter will act as tenant for life during the minority: S. L. Act, 1925, s. 19.

Married women.

Women married after 1882 or acquiring title after 1882 have not been subject to disability: M. W. P. Act, 1882, ss. 2 and 5. A married woman, tenant for life, even if there is a restraint, can convey without her husband (S. L. Act, 1925, s. 25); also if she is entitled to a fee simple or term of years absolute subject to a restraint against anticipation she can make title: *ib.*, s. 1 (1) (iv).

Lunatics and defectives.

Lunatics and defectives can make title by their committee or receiver, who will convey in their names (L. P. Act, 1925, s. 22); see also as to settled land: S. L. Act, 1925, s. 28.

No tenant for life.

Even when there is no tenant for life of settled land (*e.g.*, by reason of a discretionary trust) the statutory owners can make title: S. L. Act, 1925, s. 23.

Charitable and public trusts.

That the land is held on charitable or public trusts is no bar to making title: S. L. Act, 1925, s. 29.

It is difficult to conceive of any case (see Chapter I) where title cannot be made by reason of disability, though if the estate owner cannot be found it may be necessary to make title under s. 77 of the Act of 1845 and pay the compensation money into court.

Provisions of S. L. Act, 1925, as to application of compensation.

By the S. L. Act, 1925, s. 76, where money in court is liable to be laid out in land to be made subject to a settlement, it may be applied or invested as capital money for the purposes of that Act. The court may direct payment to the trustees of a settlement if any capital money is paid into court in respect of land comprised in the settlement: *ib.*, s. 75 (8).

Compensation money not to be paid into court as a rule.

Under L. P. Act, 1925, s. 42 (7), a purchaser who can obtain a good title without payment into court must be content with a title so made unless to avoid expense, or delay, or for any special reason he considers it expedient that the money should be paid into court.

Conveyance.

After the compensation has been paid the promoters may enter and commence work on the land, and are entitled to a conveyance.

Where an owner neglects or refuses to convey the land thus acquired the promoters may by deed vest it in themselves : Lands C. Act, 1845, s. 77. When the name of the estate owner is known the agent of the promoters should also convey the land to them using his name : L. P. Act, 1925, ss. 7 and 74 (4).

Superfluous lands.

Where the land acquired is in excess of the amount required for the proposed work the superfluous land must be sold within the time prescribed in the special Act, or within ten years after the expiration of the time limited in the special Act for the completion of the work : Lands C. Act, 1845, s. 127.

The sale must be absolute, but the promoters have the ordinary rights of owners as to the reservation of easements and as to imposing restrictions.

Rights of pre-emption.

Except in the case of land within a town, the original owners or their successors have a first right of pre-emption and after them the neighbouring owners : s. 128. A person will lose his right of pre-emption if he does not signify his desire to exercise it within six weeks of the offer (s. 129) ; the right of pre-emption, when it arises, can be treated as an " estate contract " and be protected by the registration of a land charge : L. C. Act, 1925, s. 10. This applies whether the land is sold or leased to the promoters. In the case of leasehold land rights of pre-emption must be registered as an estate contract notwithstanding the provisions of the L. P. Act, 1925, s. 6 : see L. C. Act, 1925, s. 10, Class C., (iv).

On sale of superfluous lands the price may be fixed by arbitration : s. 130.(*e*)

The following is the Table referred to at the beginning of this chapter.

(*e*) See the cases cited in Halsbury's Laws of England, Vol. 6, pp. 27-29.

Object for which land is required.	Statute authorising compulsory purchase.	Authority (if any) to confirm issue Provisional Order.
Barracks construction of military	Military Forces Localisation Act, 1872	
Cemeteries	Cemeteries Clauses Act, 1847	
Customs	Customs Consolidation Acts, 1853-1876; Customs Buildings Act, 1879	
Development of Towns ..	Town Improvements Clauses Act, 1847	Commissioners appointed special Act
	Open Spaces Act, 1906	
	Development and Road Improvement Funds Act, 1909, Road Improvement Act, 1925	Development Commissio appointed under s. 3 of Act of 1909.
	Town Planning Act, 1925	Minister of Health
Drainage	Sewers Act, 1833; Land Drainage Acts, 1847 to 1861	Commissioners of Sewers .
Ecclesiastical purposes— Church building	Church Building Acts, 1818-1838, as revised by the Statute Law Revision Act, 1873	Ecclesiastical Commissio
Enfranchisement of ecclesiastical land held on leases over twenty-one years	Places of Worship Enfranchisement, Act, 1920	
Education	Education Act, 1921 ..	President of Board Education
Forestry	Forestry Act, 1919, s. 7; see also s. 3 (5)	Development Commissio
Health	Public Health Acts, 1875 to 1925	Ministry of Health (orig ally L.G.B.)

Remarks.
provisions as to compensation, see Acquisition of Land (Assessment of Compensation) Act, 1919.
Public Health Interments, Act, 1879.
to compensation, see Acquisition of Land (Assessment of Compensation) Act, 1919.
Acquisition of Land (Assessment of Compensation) Act, 1919. As to widening and Improvement of Streets, see Public Health Act, 1925, ss. 33, 34.
S. L. Act, 1925, s. 56, as to powers of tenant for life to dedicate settled land for streets and open spaces.
also Roads, Local Government, and Housing. As to compensation, see Acquisition of Land (Assessment of Compensation) Act, 1919. As to Powers of Local Authority over Private Streets, see Public Health Act, 1925, s. 35.
also London, special provisions. As to sanitation generally, see Public Health Acts, 1875 to 1925.
Commissioners' power to raise money has been restricted by the abolition of compulsory church rates: see Compulsory Church Rate Abolition Act, 1860.
d acquired for education is exempt from restrictions in mortmain, s. 117. As to special provisions relating to alienation and appropriation of land acquired for educational purposes, see ss. 113-115; as to purchase of land by agreement, see ss. 110, 116. See also Acquisition of Land (Assessment of Compensation) Act, 1919.
to the Development Commissioners, see the Development and Road Improvement Funds Act, 1909.
ore 1919 the order had to be issued with the authority of the Local Government Board, but by he Ministry of Health Act, 1919, s. 3, the powers and duties of the Local Government Board ave been transferred to the Ministry of Health. The powers conferred by these Acts only apply o sanitary authorities outside London. As to sanitation inside London, see Public Health London) Act, 1891, also Acquisition of Land (Assessment of Compensation Act 1919.

Object for which land is required.	Statute authorising compulsory purchase.	Authority (if any) to confirm issue Provisional Order.
Housing	Housing Act, 1925. Town Planning Act, 1925.	Ministry of Health .. Minister of Health ..
Lighthouses	Merchant Shipping Act, 1894	
Local Government	Local Government Acts, 1888 and 1894	Ministry of Health (origina L. G. B.)
London, Special provisions as to	Metropolitan Paving Act, 1817; Metropolis Management Acts, 1855 to 1879; Public Health (London) Act, 1891	A secretary of state ..
Military purposes	Defence Acts, 1842 to 1873; Defence of the Realm Acts, 1916 and 1920; Defence of the Realm (Consolidation) Regulations, 1914; Military Lands Acts, 1892 to 1900; Ranges Act, 1891; Territorial and Reserve Forces Act, 1907; Lands Clauses Consolidation (Amendment) Act, 1860, s. 7	Secretary of State for Wa
Naval Purposes	Naval Works Acts, 1895 to 1899; Admiralty (Signal Stations) Act, 1815; Coastguard Service Act, 1856; Admiralty Lands and Works Act, 1864	Lords Commissioners of Admiralty
Post Office	Post Office Land Act, 1881	Order issued with sanct of Treasury and confirm by Parliament
Prison	Prison Acts, 1865 to 1884..	Consent of Treasury .
Hospital, isolation	Isolation Hospital Act, 1893	Ministry of Health (origina L. G. B.)

Remarks.
e powers and duties of the Local Government Board were, by the Ministry of Health Act, 919, transferred to the Minister of Health. See also Public Health Act, 1925, Pt., VII.
e Housing Act, 1925, contains special provisions as to compensation; as to which see lso the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 7. As to powers f tenant for life to provide land for housing, see S. L. Act, 1925, s. 57. See also the Jnemployment Relief Works Act. 1920, continued in force by the Expiring Laws Continuance Acts, 1921 to 1925.
e Act of 1888 authorises county councils to acquire land. The Act of 1894 authorises parish, rban and district councils to acquire land; see Acquisition of Land (Assessment of Compensation) Act, 1919. As to powers of a tenant for life to provide land for public and charitable purposes, see S. L. Act, 1925, s. 55.
e Metropolitan Paving Act provides for street improvements. The other Acts confer powers n metropolitan cities and boroughs to acquire land by agreement for sewers, drainage, revention of floods, and other special purposes. The London County Council alone can xercise compulsory powers, and then only with the consent of a secretary of state. See cquisition of Land (Assessment of Compensation) Act, 1919.
military tramways, see Military Tramways Act, 1887; for this purpose land can be acquired nder a provisional order of the Secretary of State for War with the consent of the Board f Trade. See Acquisition of Land (Assessment of Compensation) Act, 1919.
the Acquisition of Land (Assessment of Compensation) Act, 1919.
to telegraphs, see Telegraph Acts, 1863 and 1892; Telegraph Construction Act, 1908, nd Acquisition of Land (Assessment of Compensation) Act, 1919.
Lands Clauses Acts are incorporated in the Prison Acts. See Acquisition of Land Assessment of Compensation) Act, 1919.

Object for which land is required.	Statute authorising compulsory purchase.	Authority (if any) to confirm issue Provisional Order.
Railways, Construction of ..	Railway Clauses Consolidation Act, 1845, and see Mines (Working Facilities) Act, 1923, Pt. II.	
Railways, Construction of Light	Light Railways Acts, 1896 and 1912	
Railways, Introduction of electrical power on	Railways (Electrical Power) Act, 1903	Provisional Order by Bo of Trade confirmed Parliament
Roads	Highways Act, 1835 ..	
Roads	Development and Road Improvement Funds Act, 1909, as amended by the Roads Act, 1920 and the Road Improvement Act, 1925	Development Commissio under s. 11 (5)
Signal Stations, Lloyd's ..	Lloyd's Signal Stations Act, 1888	
Small Holdings and Allotments	Small Holdings and Allotments Acts, 1908 to 1919	Ministry of Agriculture Fisheries
Subsidence and other mining rights, Acquisition of	Mines (Working Facilities) Act, 1923, Pt. I	
Support, Acquisition of rights of	Mines (Working Facilities) Act, 1923, Pt. I	
Water supply	Waterworks Clauses Act, 1847	

Remarks.
s Act incorporates the Lands Clauses Acts, in all Acts authorising the construction of railways. It provides for accommodation works for the benefit of adjoining land. Variations procedure under the Land Charges Acts are contained in the Railway Companies Act, 1867, nd the Regulation of Railways Act, 1868. The Mines (Working Facilities and Support) ct, 1923, Pt. II, provides for the restriction of working mines in the neighbourhood of ilway workings and other matters connected therewith.
se Acts incorporate the provisions of the L. C. C. Acts, but matters determinable by a jury, stices or an arbitrator under those Acts are in the case of light railways determinable by n arbitrator appointed by the parties or the Board of Trade. The arbitration proceedings re governed by the Arbitration Act, 1889. A special scale of costs is fixed, see Light Railway Costs) Rules, 1898. Compensation money is payable to trustees instead of to the Bank of ngland.
proval of Treasury must be obtained; land may be acquired on either side of road within vo hundred and twenty yards from the centre of the road. Any order referring to a common, pen space or allotment must be confirmed by Parliament. Questions of disputed compensaon are settled by a single arbitrator appointed by the Lord Chief Justice. As to power r tenant for life to dedicate land for streets, &c., see S. L. Act, 1925, s. 56.
ers of compulsory purchase may in some cases be exercised by Small Holdings Commissioners. s to powers of a tenant for life to provide land for small holdings, see S. L. Act, 1925, s. 57.

CHAPTER XIII.

Stamps on Sales.(a)

Agreements.

Under the Stamp Act, 1891, an agreement or any memorandum of an agreement, under hand only, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract or obligatory upon the parties from its being a written instrument, is liable to a fixed duty of 6*d.*,

Exemptions.

subject to certain exemptions, of which it is only necessary here to mention the following, namely, an agreement or memorandum, the matter whereof is not of the value of £5, and an agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise.(b)

Conveyances on sale.

By the same Act,(c) as amended by s. 73 of the Fin. (1909-10) Act, 1910, every conveyance or transfer on sale of any property and foreclosure order (except stocks or marketable securities within Stamp Act, 1891, s. 122) is liable to the following stamp duties :—

Where the amount or value of the consideration for the sale	£	*s.*	*d.*
does not exceed £5	0	1	0
And where the same exceeds £5 and does not exceed £10	0	2	0
„ „ 10 „ 15	0	3	0
„ „ 15 „ 20	0	4	0
„ „ 20 „ 25	0	5	0
„ „ 25 „ 50	0	10	0
„ „ 50 „ 75	0	15	0
„ 75 „ 100	1	0	0
„ „ 100 „ 125	1	5	0
„ „ 125 „ 150	1	10	0
„ „ 150 „ 175	1	15	0
„ „ 175 „ 200	2	0	0
„ „ 200 „ 225	2	5	0
„ „ 225 „ 250	2	10	0
„ „ 250 „ 275	2	15	0
„ „ 275 „ 300	3	0	0
and where the consideration exceeds £300, then for every £50, and also for any fractional part of £50 of such amount or value	0	10	0

(a) As to stamps generally, see Alpe, 18th ed., and Highmore, 4th ed. ; notes will be found under the precedents where any difficulty as to the amount of the stamp arises ; see also Memorandum on stamp duties issued by The Law Society, 54 Sol. J. 858.

(b) Stamp Act, 1891, s. 59 ; Sch. I, " Agreement or any Memorandum of an Agreement." As to contract notes, see Fin. (1909-10) Act, 1910, ss. 77, 78.

(c) Sch. I, " Conveyance or Transfer on Sale."

Voluntary conveyance.

The Finance (1909-10) Act, 1910, also imposes the same duties on voluntary conveyances as defined in s. 74, the duty being taken on the value of the property transferred in place of the amount of the consideration. This matter is treated in connexion with voluntary conveyances, *infra.*

Exception where consideration is £500, or under.

Where the consideration does not exceed £500, and the instrument contains a statement certifying that the conveyance does not form part of a larger transaction or a series of transactions, in respect of which the amount or aggregate amount of the consideration exceeds £500, the duties under the Stamp Act, 1891, only are payable, *i.e.*, one-half of the respective duties given above.(*d*) The exemption applies to leases granted at a premium under £500.(*e*)

Transfer of stock or marketable security.

On the transfer of any stock or marketable security as defined in s. 122 of the Stamp Act, 1891, the stamp duty was not increased by the Finance Act, 1910, s. 73, but this has now been amended by Fin. Act, 1920, s. 36, hence stock and marketable securities will bear duty at the double rate.

In the following cases it was held that the transaction was not liable to duty as a conveyance on sale, viz. :—

Dispositions of property not requiring *ad valorem* stamp.

(1) Where personalty was assigned to trustees on trust to sell, and out of the proceeds to pay themselves the debts owing to them, and then the debts due to the other creditors, and to pay the surplus to the assignor : *Coates* v. *Perry* (1821), 3 Brod. & B. 48.

(2) Where a father conveyed property to his son in consideration of natural love, &c., and also of the provision which the son had that day made by bond of £1,500 for his sister's portion : *Denn* v. *Diamond* (1825), 4 B. & C. 243.

(3) Where by a marriage settlement the uncle of the husband agreed, in consideration of the portion advanced by the lady, to pay to the trustees for the use of the husband and wife during their joint lives an annuity of £800 : *Massy* v. *Nanney* (1837), 3 Bing. N. C. 478 ; 6 L. J. C. P. 185.

(4) Where an asphalte company purported, in consideration of a sum of money, to grant an exclusive licence to sell asphalte within a limited area.(*f*)

(*d*) Fin. (1909-10) Act, 1910, s. 73 ; Highmore, 4th ed., 153.

(*e*) Revenue Act, 1911, s. 15.

(*f*) *Limmer Asphalte, &c., Co.* v. *I. R. C.* (1872), L. R. 7 Ex. 211 ; 41 L. J. Ex. 106.

(5) A release of a right to work coal in consideration of a sum of money.(*g*)

Dispositions requiring *ad valorem* stamp as conveyances on sale.

A contract for or conveyance on sale of a policy of assurance : *Caldwell* v. *Dawson* (1850), 5 Ex. Rep. 1. Or of the goodwill of a business,(*h*) or of its book debts (*Velasquez* v. *I. R. C.* [1914], 3 K. B. 458 ; 83 L. J. K. B. 1108), or of a share in a foreign patent,(*i*) requires an *ad valorem* stamp ; so does a deed whereby a retiring partner assigns his share of the partnership property to the other partners in consideration of a sum of money paid to him as the value of such share.(*j*) Where eight persons constituting a partnership firm formed themselves into a limited company, all the shares of which were to be allotted to themselves in proportion to their shares in the partnership, and then by deed the eight partners conveyed the real estate and trade marks of the firm to the company, it was held that the transaction was a sale and that the deed required an *ad valorem* stamp accordingly, also that it made no difference that the parties were the persons who constitued the company : *Foster* v. *I. R. C.* [1894], 1 Q. B. 516 ; 63 L. J. Q. B. 173. The fact that a transaction is by way of family arrangement does not necessarily preclude its being treated as a conveyance on sale : *Marquis of Bristol* v. *I. R. C.* [1901], 2 K. B. 336 ; 70 L. J. K. B. 759.

Revenue Act, 1909, s. 7.

The Revenue Act, 1909, s. 7, repeals s. 59 (1) of the Stamp Act, 1891, in so far as that section is limited to contracts made in the United Kingdom ; thus contracts within the section are liable to the *ad valorem* duty though made outside the United Kingdom.

"Conveyance on sale" includes foreclosure order.

Under the Finance Act, 1898, s. 6, a conveyance on sale includes a foreclosure order.(*k*) The section confirms the decision in *Huntingdon* v. *I. R. C.* [1896], 1 Q. B. 422 ; 65 L. J. Q. B. 297. And is retrospective : *Re Lovell and Collard* [1907], 1 Ch. 249.

Consideration how ascertained for purpose of duty.

A covenant by a purchaser of leasehold property to pay the rent reserved or, if apportioned, the apportioned part, is not part of the consideration for the purpose of calculating the *ad valorem*

(*g*) *G. N. Ry. Co.* v. *I. R. C.* [1901], 1 K. B. 416 ; 70 L. J. K. B. 336. See also *Re Richard and G. W. Ry. Co.* [1905], 1 K. B. 68, 73 ; 74 L. J. K. B. 9.

(*h*) *Danubian Sugar Factories* v. *I. R. C.* [1901], 1 K. B. 245, 250 ; 70 L. J. K. B. 211.

(*i*) *Smelting Co. of Australia* v. *I. R. C.* [1897], 1 Q. B. 175 ; 66 L. J. Q. B. 137 ; *Urban* v. *I. R. C.*, 29 T. L. R. 476 ; Revenue Act, 1909, s. 7.

(*j*) *Christie* v. *I. R. C.* (1866), L. R. 2 Ex. 46 ; 36 L. J. Ex. 11 ; *Phillips* v. *I. R. C.* (1867), L. R. 2 Ex. 399 ; 36 L. J. Ex. 199.

(*k*) *I. R. C.* v. *Tod* [1898], A. C. 399 ; 67 L. J. P. C. 42 ; *Re Lovell and Collard* [1907], 1 Ch. 249 ; 76 L. J. Ch. 246.

duty: *Swayne* v. *I. R. C.* [1900], 1 Q. B. 172; 69 L. J. Q. B. 63. But where freehold land subject to tithe was sold in lots and the conveyance contained a covenant by the purchaser to pay to the vendor the annual sum of one shilling and a covenant by the vendor to pay the whole tithe, it was held that the instrument was liable to an *ad valorem* duty in respect of the periodical payment of one shilling as well as of the purchase-money: *Martin* v. *I. R. C.* [1904], 91 L. T. 453.

Periodical payments.

A periodical payment may be chargeable under the Act even though such payment may be contingent on an uncertain event, *e.g.*, sufficiency of profits.(*l*)

The Finance Act, 1900, s. 10, provides that:—

No further stamp duty in respect of covenant to improve, &c.

A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject-matter of the conveyance, is not chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

Compound of purchase and mortgage.

If the instrument is a compound of a conveyance on sale and a mortgage, the deed must be stamped with the proper *ad valorem* duties, as on a purchase and mortgage for the specified sums; hence the transaction is nearly always carried out by separate instruments.

Sale of equity of redemption.

Where property is sold subject to a mortgage the duty is *ad valorem*, as on a conveyance on sale, on the aggregate amount of the mortgage debt (including interest, if any, then due) and the purchase-money: Stamp Act, 1891, s. 57; Alpe, 18th ed., 133, *et seq*; Highmore, 4th ed., 169. But this principle does not apply to the stamp on a voluntary conveyance of an equity of redemption.

Separate deed of covenant.

Any separate deed of covenant (not *being an instrument chargeable with* ad valorem *duty as a conveyance on sale or mortgage*), made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid, is chargeable with a duty equal to the *ad valorem* duty on the consideration or mortgage money, where the *ad valorem* duty shall not exceed 10*s.*, and in any other case with a duty of 10*s.*(*m*)

Practice as to stamping contracts within s. 59.

Having regard to s. 59 (5) of the Stamp Act, 1891, the usual practice as to stamping agreements for sale which come within

(*l*) *Underground Electric Rys.* v. *I. R. C.* [1906], A. C. 21; 75 L. J. K. B. 117; Highmore, 4th ed., 168; see *Underground Electric Rys. Co. Ltd.* v. *I. R. C.* [1916], 1 K. B. 306; 86 L. J. K. B. 356.

(*m*) Schedule, under the head "Covenant."

that section, and which are intended to be carried into effect by a subsequent conveyance or transfer, is to stamp the agreement with the fixed duty of 6*d.* Care must be taken to get the conveyance or transfer executed within six months after the date of the agreement, if possible; and if this cannot be done, the solicitor for the purchaser must be prepared to satisfy the Commissioners that there has been no unreasonable delay in completion.

Adhesive agreement stamp.

The duty of 6*d.* upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person who first executes it: s. 22; Alpe, 18th ed., 56; Highmore, 4th ed., 94.

Stamp on purchase of several lots at auction.

A purchaser of several lots at an auction is considered to have entered into an equal number of agreements for the purchase of the same lots, so that the agreement must bear as many stamps as there are lots, assuming that the purchase-money for each lot amounts to £5. But the value of the lots must be taken separately; so that if the purchase-money for no single lot amounts to £5, the agreement would not be chargeable with any stamp. If the separate contracts are combined in one contract in writing this attracts only one stamp.(*n*)

Contracts by correspondence.

If the agreement consists of several letters, it is sufficient to stamp one.(*o*)

Duplicates.

The duplicate or counterpart of an instrument charged with duty must be stamped with the same duty as the original instrument where the duty does not amount to 5*s.*, and in any other case with a duty of 5*s.* S. 72 of the Act of 1891 provides that:—

> The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor), is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

Opinion of Commissioners as to sufficiency of stamp.

Subject to such regulations as the Commissioners may think fit to make, they may be required by any person to express their opinion with reference to any executed instrument:—

(1) Whether it is chargeable with any duty;
(2) With what amount of duty it is chargeable.

(*n*) *James* v. *Shore* (1816), 1 Stark. 426; *Watling* v. *Horwood* (1848), 12 Jur. 48; Alpe, 18th ed., 19.

(*o*) *Stead* v. *Liddard* (1823), 1 Bing. 196; 1 L. J. (O. S.) C. P. 52.

Adjudication stamps.

If the Commissioners are of opinion that the instrument is not chargeable with duty, it may be stamped with a particular stamp denoting that it is not so chargeable. If they are of opinion that it is chargeable with duty, they are to assess the duty with which in their opinion it is chargeable and when the instrument is stamped in accordance with the assessment it may be stamped with a particular stamp denoting that it is duly stamped.(*p*) Any person dissatisfied with the assessment of the Commissioners may within twenty-one days after the assessment appeal against the assessment to the High Court.(*q*)

Unstamped instrument.

Section 15 of the Act of 1891, as amended by the Fin. (1909-10) Act, 1910, s. 74 (3), provides for the stamping after execution of certain documents and for the penalties for omitting to stamp the same within due time.

Production of documents as evidence.

Until an instrument is properly stamped, it cannot be given in evidence except in criminal cases or for collateral purposes. But if the instrument is one which may legally be stamped after the execution thereof, the officer of the court is empowered to receive and give a receipt for the unpaid duty, and the penalty required by the statute, and a further sum of £1. And on this being done the instrument will be admitted in evidence.(*r*)

Registrar's duty as to stamps.

The Registrar will not complete a transaction under the L. R. Act, 1925, unless the stamp duty has been paid.

(*p*) Stamp Act, 1891, s. 12 (3) (4); see Fin. (1909-10) Act, 1910, s. 74 (2); Highmore, 4th ed., 60.

(*q*) Stamp Act, 1891, s. 13; Highmore, 4th ed., 68, 69.

(*r*) Section 14; Highmore, 4th ed. See *Maynard* v. *Consolid. Kent Collieries* [1903], 2 K. B. 121; 72 L. J. K. B. 681.

DIVISION I.

CONDITIONS OF SALE AND CONTRACTS FOR SALE.

PART I.

FORMS OF SPECIAL CONDITIONS OF SALE.(a)

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PART I.(a)

NOTE.—The forms in this section apply to sales of registered land without modification.

SECTION I.

As to the Auction, Deposit, Taking Possession, and Valuations.

(*See General Conditions of* 1925, *Clause* 1, *inf.*)

No. 1.

Mode of sale.

THE [Each] Purchaser shall at the close of the sale to him pay a deposit of £— per cent. on the amount of his purchase-money and sign an agreement in the form subjoined to these conditions for completion of his purchase according to these conditions, and when he has accepted the title he shall, under an order for the purpose to be obtained by and at the expense of the Vendor, pay as part of his purchase-money the sum required to be paid into Court for the purpose of obtaining under section fifty of the Law of Property Act, 1925, the discharge of the property from certain incumbrances, and shall pay the balance of his purchase-money in accordance with Clause 5 of the General Conditions of 1925.

No. 2.

Discharge of incumbrances by payment into court under s. 50 of the L. P. Act, 1925.(b)

No. 2A.

THE auctioneer [*or* the Vendor's solicitors] shall on receipt of the deposit pay the same into the —— Bank, to the joint account of two responsible persons as stakeholders, one to be nominated by the Vendor and the other by the Purchaser [*or otherwise as may be arranged*], the same to be at the risk of the Purchaser, who shall be entitled on completion to any interest which may have been allowed thereon by the Bank.(c)

Payment of deposit to stakeholders appointed by both parties.

No. 3.

THE [Each] Purchaser may take possession of the property [the Lot purchased by him] before the actual completion of the purchase upon paying to the Vendor one-half of the amount of

Power for purchaser to take possession before completion.

(a) This Part is designed to supplement, not to take the place of, the General Conditions of 1925, which will no doubt be used with or without modification in nearly all contracts for the sale of land.

(b) Under s. 50 of the L. P. Act, 1925, which extends to exchanges as well as sales, the court may not only discharge the land actually sold or exchanged from the incumbrance, but any other land affected thereby, whether or not a previous order has been made confined to the land then sold. This section is not required where the incumbrance, being an equitable interest, can be overreached by virtue of a trust for sale or the S. L. Act powers. See also clause 28 of the General Conditions of 1925, *inf.*

Payment into court on sale or exchange.

(c) See *Ellis* v. *Goulton* [1893], 1 Q. B. 350; 62 L. J. Q. B. 232. In the case of a sale by a fiduciary vendor no part of the purchase-money should be paid to stakeholders, because if the stakeholder absconds the vendor is liable to refund the loss to the beneficiaries.

Stakeholders and fiduciary vendors.

his purchase-money [the amount previously paid as a deposit being taken into account] as a [further] deposit and in part payment of his purchase-money, and in other respects the provisions of Clause 6 of the General Conditions of 1925 shall apply.(*d*)

No. 4. Timber [and fixtures] at a valuation.

THE [Each] Purchaser shall, in addition to his other purchase-money [to the amount of his bidding at the sale (*e*)], pay for [the fixtures referred to in the particulars and for] all timber (*f*) and other wood in accordance with the provisions of Clause 3 of the General Conditions of 1925.

No. 5. Timber [and fixtures] when valuation stated in particulars.

IN addition to his other purchase-money [the amount of his bidding at the sale] the [each] Purchaser shall pay the amount stated in the particulars for the timber and other wood [and fixtures] on the property [the Lot purchased by him] and sub-section 3 of Clause 3 of the General Conditions of 1925 shall have effect accordingly.

No. 6. Where the Vendor is in possession and is to be treated as a tenant.

IN the case of lands of which the Vendor is stated to be in possession [*or* the tenancy of which is stated in the particulars to expire at ——], vacant possession will be given to the Purchaser on completion of the purchase thereof, and the provisions of sub-section 7 of Clause 22 of the General Conditions of 1925 shall apply.(*g*)

(*d*) As to the effect of a purchaser taking possession in the absence of any stipulation, see Chap. IV, p. 110, *supra* ; Dart, 7th ed., 512-514.

Purchaser taking possession before completion.

If a purchaser retains possession after the day fixed for completion without causing deterioration to the property, the Court, in an action by the vendor, will order the purchaser to elect whether he will give up possession or pay the balance of his purchase-money, with interest from the day fixed for completion : *Greenwood* v. *Turner* [1891], 2 Ch. 144 ; 60 L. J. Ch. 351 ; see also *Cook* v. *Andrews* [1897], 1 Ch. 266 ; 66 L. J. Ch. 137.

(*e*) These words will only be used on a sale by the Court.

Timber a manorial incident.

(*f*) For definition of timber, see Dart, 7th ed., 145 ; and for fixtures, *ib.*, 559. In the event of the property being still subject to manorial incidents (L. P. Act, 1922, s. 128 (2) (*c*)) the lord retains his interest in the timber until a compensation agreement is made or notice is served. As to compensation for timber, see *ib.*, 13th Sch., Pt. II, para. 12.

As to the difference between a mere valuation and a submission to arbitration, see *Turner* v. *Goulden* (1873), L. R. 9 C. P. 57 ; 43 L. J. C. P. 60 ; *Re Dawdy and Hartcup* (1885), 15 Q. B. D. 426 ; 54 L. J. Q. B. 574 ; *Re Carus-Wilson and Greene* (1886), 18 Q. B. D. 7 ; 56 L. J. Q. B. 530 ; *Re Hammond and Waterton* (1890), 62 L. T. 808 ; Dart, 7th ed., 244.

Bill of sale, effect of deposit.

(*g*) As to the valuation under the Agr. Hold. Act, 1923, see note to Form No. 4, *supra*. Where no deposit is paid on the sale of chattels it seems that the contract should be registered as a bill of sale : *Re Roberts* (1887), 36 Ch. D. 196 ; 56 L. J. Ch. 952 ; Sale of Goods Act, 1893. If a deposit is paid no memorandum is necessary : *ib.*, s. 4.

No. 7.

Right to remove crops.

THE Vendor also reserves the right to dig and remove the crops of —— at any time before the —— day of —— next (*h*) [and to hold an auction at any time before that date].

No. 8.

Payment for tenant's and trade fixtures.

IN addition to his other purchase-money [the amount of his bidding at the sale] the [each] Purchaser shall pay for the tenant's fixtures (*i*) in and about the property [Lot purchased by him] at a valuation, in accordance with Clause 3 of the General Conditions of 1925.

No. 9.

On sale of a public-house. Valuation of fixtures, stock in trade, &c.

(1) The Purchaser shall take at a fair valuation, to be made by two appraisers, one to be appointed by the Vendor and the other by the Purchaser, or their umpire, who shall be chosen in the usual manner, all the tenant's and trade fixtures, fittings, furniture and effects (other than stock in trade) on the property which the Vendor may desire to sell, notwithstanding any description thereof in the particulars.

(2) The decision of the appraisers or umpire as to what are tenant's and trade fixtures and fittings shall be conclusive.

(3) The Purchaser shall also take so much of the stock in trade upon the property as shall not have been sold or disposed of at the time of completion of the purchase, according to the valuation of two gaugers, one to be appointed by the Vendor and the other by the Purchaser, or their umpire, who shall be chosen in the usual manner.

(4) The Purchaser shall pay the amount of the aforesaid valuations, and shall also pay for the unexpired time in the licences (*j*) and assurances relating to the property and the effects therein, and all outgoings at the time of the completion of the purchase.

(5) If the Purchaser shall neglect to appoint an appraiser for three days, after being required so to do, or to appoint a gauger on request, or if the appraiser or gauger appointed by the Purchaser shall neglect or refuse to nominate an umpire on request, or to proceed in the valuation, the appraiser or

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(*h*) As to the object of this condition, see Dart, 7th ed., 144.

(*i*) For definition of fixtures, see Dart, 7th ed., 559.

Public-house licence.

(*j*) It seems that non-disclosure of the fact that the licence has been indorsed is not an omission so material as to entitle the purchaser to rescind: *Re Ward and Jordan* [1902], 1 Ir. R. 73. The rights as between the vendor and purchaser in respect of the licence until competion are defined in *Tadcaster Tower Brewery Co.* v. *Wilson* [1897], 1 Ch. 705; 66 L. J. Ch. 402. The purchaser must not carry on business until the licence is transferred: *Barnard* v. *Barton* [1906], 1 K. B. 357; 75 L. J. K. B. 326.

gauger appointed by the Vendor shall make the valuation alone, and the same shall be binding on the Purchaser.(*k*)

No. 10.

Sale of business as a going concern.

(1) If the balance of the purchase and valuation money (*l*) [for Lot——] is paid before the —— day of —— next the Purchaser [of that Lot] shall be let into possession of the property as a going concern on that day, and on and from that day shall become liable to discharge and shall discharge all wages and other outgoings connected with the business, and shall keep indemnified the Vendor against all liabilities and outgoings of the business as on and from that day.

(2) But if for any reason possession [of Lot——] is not delivered to the Purchaser on the day aforesaid, the business on and from that day shall be carried on by or under the direction of the Vendor, at the risk and cost, but for the benefit, of the Purchaser thereof, until possession shall be delivered to him.

(3) Any question which may arise as to the balance due to or from the Purchaser in respect of the business, and any other question which may arise in reference to carrying on the same, shall be settled [*in the case of sale by the court* by the judge at Chambers *or*] by the arbitration of two referees, one to be appointed by the Vendor and the other by the Purchaser, and their umpire in accordance with the provisions of the Arbitration Act, 1889.

No. 11.

Sale of shop and business, purchase-money to be paid by instalments, Purchaser meanwhile remaining tenant of Vendor and conducting business under his supervision.

Time of the essence.

Vendor's right to conduct the business.

(1) The Purchaser shall forthwith go into occupation of the property, and remain in such occupation as tenant of the Vendor until the date fixed for completion at the yearly rent of £ ——, free from deductions except landlord's property tax and tithe rentcharge, the said rent to be payable on the —— day of —— in each year, and the first of such payments shall be made on the —— day of ——.

(2) Provided that any excess of the yearly rent over £ —— per cent. per annum on the balance of purchase-money for

(*k*) Where a public-house is sold as a going concern time is of the essence of the contract: *Cowles* v. *Gale* (1871), L. R. 7 Ch., at p. 16; 41 L. J. Ch. 14; and see *Weston* v. *Savage* (1879), 10 Ch. D. 736; 48 L. J. Ch. 239; *Warren* v. *Moore* [1898], 14 T. L. R. 497; *Farnham Brewery Co.* v. *Hunt* [1893], 68 L. T. 440. Even where there is no express provision entitling a vendor to carry on a business after the date fixed for completion he may do so, and is entitled to be indemnified for loss, if the delay is caused by the default of the purchaser and the vendor has given him notice that the vendor is carrying on the business at a loss: *Golden Bread Co.* v. *Hemmings* [1922], 1 Ch. 162; 91 L. J. Ch. 228.

(*l*) This will include the valuation money for plant, stock-in-trade, book debts, &c.

the time being remaining unpaid shall be applied in or towards reduction of such balance.

(3) The Purchaser may at any time before the date fixed for completion, on giving to the Vendor at least one month's notice in writing, pay the whole of the said balance with interest thereon at the rate of £—— per cent. per annum.

(4) Upon such payment the said tenancy and the payment of rent shall cease and a proper conveyance shall be executed to the Purchaser, or as he may direct.

(5) Until payment of the whole of the said balance and interest the business shall be carried on in all respects as heretofore, the Vendor retaining the possession or direction thereof as though the Purchaser were his agent.

Section II.

Note.—The forms in this section only apply to registered land when so stated.

As to the Commencement of Title and the Contents of the Abstract.

No. 12.

Commencement with Probate: no evidence of seisin.

The abstract of title shall commence [as to Lot ——] with the Probate of a Will of a testator who died on the —— day of ——, [and the provisions of clause 12 of the General Conditions of 1925 shall apply].(*m*)

No. 13.

Commencement with a Probate: declaration as to seisin.

The abstract of title shall commence [as to Lot ——] with the Probate of Will of a testator who died in the year 19—, and a statutory declaration will be furnished if required at the expense of the Purchaser, that the property [Lot ——] has for the last twelve years and upwards been enjoyed in accordance with the title derived from the personal representatives under such Will, and in other respects clause 12 of the General Conditions of 1925 shall apply.

No. 14.

Title to consist of Probate, assent and appointments of new trustees containing general description only.

(1) The Vendors are the trustees of the Will of a testator who died in the year ——. The title shall consist of the Probate of the said Will (which contained a devise of the property on trust

(*m*) The vendor must, of course, only ask the purchaser to assume what he believes to be true: Dart, 7th ed., 166.

After 1925 the will does not pass the legal estate to the devisee, but the personal representatives take it: Ad. of E. Act, 1925, s. 1. Until they assent in writing to its passing to the devisee: *ib.*, s. 36. Whether as tenant for life by means of a vesting assent: S. L. Act, 1925, ss. 6 and 8; or to trustees for sale: L. P. Act, 1925, 5th Sch., Form No 9; or to an absolute owner: *ib.*, Form No. 8. Indeed, save in regard to a legal customary estate in copyholds, this was true after 1897 under Pt. I of the L. T. Act, 1897, though assents relate back to the death.

Commencement of title with Probate.

for sale (*a*)) an assent in writing by the executors in favour of the trustees for sale, and of several appointments of new trustees, thereof, in which assent and appointments as well as in the said Will the real estate of the testator is referred to by a general description, and there is no specific description of the property now offered for sale.

Seisin to be evidenced by declaration.

(2) A statutory declaration will be furnished to the Purchaser at his own expense that the property has been held consistently with the title derived from the personal representatives under the Will for the last twelve years and upwards, and such declaration shall be accepted by the Purchaser as sufficient evidence that the testator was at his death seised in fee simple in possession of the property, free from incumbrances.

No. 14A.

Of freeholds on a sale by mortgagees(*b*)

THE abstract of title shall commence with the Mortgage Deed [Charge by way of Legal Mortgage] dated —— under which the Vendors hold, and the Vendors will under their statutory power convey the fee simple to a Purchaser.(*c*)

No. 15.

Title to freehold ground rents.

(1) The abstract of title to the several Lots shall commence with counterparts of the leases by which the ground rents were respectively reserved as mentioned in the particulars.

(2) Each Purchaser shall assume that the person or persons by whom each lease was granted was or were seised in fee simple in possession free from incumbrances of the property comprised therein at the date thereof,(*d*) but a statutory declaration will

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Settled land.

(*a*) If the property is devised in settlement, or if there is a future trust for sale (S. L. Act, 1925, s. 30 (1) (iv)), title must be made by the tenant for life or person having the powers of a tenant for life, unless title is made by the personal representatives before they have executed a vesting assent. During a minority title will be made either by personal representatives or by the trustees of the settlement (S. L. Act, 1925, s. 26, 2nd Sch., para. 3); save that if the legal estate is held for the benefit of an infant and a person of full age jointly then there will be a trust for sale (L. P. Act, 1925, s. 19, 1st Sch., Pt. III); if an infant and a person of full age are tenants for life, then during the minority the person of full age will be treated as the tenant for life: S. L. Act, 1925, s. 19 (3).

Registered land.

(*b*) This form will apply (with the addition of Form No. 176 *inf.*) to a sale of registered land where the mortgage is entered as an incumbrance prior to registration and the mortgagees are not registered as proprietors of the incumbrance.

(*c*) See L. P. Act, 1925, s. 88. The power applies whether the mortgage originally was of the fee simple, or of a long term derived out of the fee simple, or has been converted into a mortgage of a long term by that Act. See also s. 104.

Freehold ground rents.

(*d*) This condition must not be used unless it is impracticable to produce a document of title relating to the freehold reversion dated before the creation of the leases. As a rule the commencement will be fixed as if the freeholds were not subject to any lease.

be furnished, if required, at the expense of each Purchaser that the Lot or Lots purchased by him has or have for the last twelve years and upwards been enjoyed in accordance with the title shown thereto.

No. 16.

Title to tithe rentcharge.

THE abstract of title to the tithe rentcharge included in Lot —— shall commence with a Deed dated, &c., being, &c., and the Purchaser shall not require the production, or any copy or abstract, of the original grant of the rectory and tithes by the Crown.(*e*)

No. 17.

On sale of charity land.

(1) The property offered for sale forms part of the endowment of the charity known as ——, and the sale is made subject to an order by the Board of Charity Commissioners for England and Wales being obtained within six months from the date of the sale consenting thereto.(*f*)

(2) The legal estate is vested in the official trustee of charity lands, and the Vendors are selling as the trustees of the charity, appointed under a scheme of the said Board, which scheme was approved by His Majesty in Council on the —— day of ——, 19—.

(*e*) In the absence of a condition, the title must commence with the original grant. Intermediate instruments being omitted until the commencement of a good thirty years' title: Dart, 7th ed., 331; L. P. Act, 1925, s. 44.

Tithe rentcharge.

Where the title to the rentcharge is registered it will still be advisable to insert the latter part of this Condition—beginning with "The Purchaser shall not."

(*f*) Application should be made to the Board for instructions before the land is put up for sale. The charity trustees have the statutory powers of a tenant for life but the requisite order must be obtained before they are exercised: S. L. Act, 1925, s. 29. A legal estate outstanding in the official trustee of charity lands is not divested by L. P. Act, 1925, 1st Sch., Pt. II. If the endowment is one held solely for educational purposes the President of the Board of Education should be substituted for the Board of Charity Commissioners: see Board of Education Act, 1899. The powers of the Charity Commissioners so far as they related to educational endowments were transferred to the Board of Education by Orders in Council dated 7th August, 1900, 24th July, 1901, and 11th August, 1902.

Board of Education.

Paras. (1) and (2) of this form apply to registered land.

Where the Ch. Trusts Act, 1869, s. 12, applies, a condition to the following effect can be added:—

"The Vendors as managing trustees of the said Charity, will, pursuant to section twelve of the Charitable Trusts Act, 1869, convey (in the name of the Official Trustee of Charity Lands) the legal estate outstanding in him and he shall not be bound to concur personally."

The usual practice, however, is for him to join to convey.

(3) The Vendors will deliver to the [each] Purchaser an abstract of title to the property sold, commencing with the Probate of a Will of a testator who died in the year ——.

(4) The Vendors shall not be bound to furnish any evidence of the seisin of the testator nor to produce any deeds or evidence of their title other than official copies of the said scheme and the original order for sale to be made by the said Board, and also, at the expense of the Purchaser requiring it, a statutory declaration to be made by some competent person that the property sold was included in the said scheme, and has been in the possession of the Vendors or their predecessors in title as trustees of the said charity for upwards of —— years.

No. 18.

On sale under the City of London Parochial Charities Act, 1883, the sale being made under an order of the Charity Commissioners.

(1) The property offered for sale forms part of the Charity known as ——, and the sale is made subject to an order by the Board of Charity Commissioners for England and Wales, being obtained within six months from the date of the sale consenting thereto.

(2) The legal estate in the property is vested in the official trustee of charity lands, and the Vendors are selling as the trustees of the said Charity.

(3) The Vendors were incorporated under section forty-eight of the City of London Parochial Charities Act, 1883,(*g*) and were constituted managing trustees under the provisions of a scheme of the said Board made in pursuance of that Act, which scheme was approved by her late Majesty in Council on the —— day of ——, 18—.

(4) The Vendors will deliver to each Purchaser an abstract of title to the property sold, commencing with the Probate of a Will, dated, &c., of a testator who died in the year ——.

(5) The Vendors shall not be bound to furnish any evidence of the seisin of the testator nor to produce any deeds or evidence of their title other than—

(a) Official copies of the said scheme, under which the legal estate became vested in the official trustee of charity lands.

(b) The statement therein referred to.

(c) The original order for sale by the said Board.

(d) At the cost of the Purchaser requiring the same a statutory declaration to be made by some competent person that

(*g*) Repealed by the Statute Law Revision Act, 1898. The whole of this form except para. 4 applies to registered land.

the property sold was included in the said scheme and statement and in the said order and has been in the possession of the Vendors or their predecessors in title, the trustees of the united Parishes (*h*) of —— , or upwards of —— years, and is believed to have been held by them or their predecessors since the —— day of ——, 18—, the date of the death of the testator.

No. 19.

Glebe lands under the Act of 1888.

(1) The property forms part of the Glebe (*i*) and endowment of the Benefice of the Parish of —— in the County of ——, and was by a Deed [of Bargain and Sale] dated the —— day of —— conveyed to the Rev. ——, the then Rector of the said Parish, and his successors, Rectors of the said Parish. [The said Deed was duly enrolled, and the record thereof appears in the records of the Record Office. The Purchaser shall not call for or be entitled to demand production of the original of such conveyance, but shall be satisfied as to the contents thereof by an inspection of the aforesaid record.]

(2) The sale shall be carried out in all respects in accordance with the provisions of the Glebe Lands Act, 1888, and the rules thereunder, and the Vendor will forthwith at his own cost serve all the notices (*j*) thereby required.

(3) This sale is conditional on the approval thereof by the Minister of Agriculture and Fisheries (*k*) being obtained, and the Vendor shall forthwith apply in the manner prescribed by

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(*h*) The parishes to which the Act applied are mentioned in the schedule to the Act.

(*i*) It should be ascertained that the property does not come within the exceptions mentioned in ss. 2 and 5 of the Glebe Lands Act, 1888. For a definition of glebe land, see s. 12. The whole of this form applies to registered land. Glebe Lands Act, 1888.

(*j*) Notice must be served on the bishop and the patron, before the application to the Ministry of Agriculture and Fisheries can be made; notice must also be served on the parishioners and, unless the Minister otherwise directs, on the clerk to the county council and the clerk to the parish, borough or urban district council: Sale of Glebe Lands Rules, 1909; 1909, W. N., Pt. II, 317. The notices must be in the forms given in the Rules. Notices required on sale under the Act.

(*k*) The Minister takes the place of the Land Commissioners (see Board of Agriculture Act, 1889), and their jurisdiction is extended to fisheries by the Act of 1903. The incumbent is the estate owner in his capacity of a corporator sole. As to the devolution of property belonging to a corporation sole, see L. P. Act, 1925, s. 180; Ad. of E. Act, 1925, s. 3 (5). The power to dispose of a legal estate under Acts of Parliament of the nature of the Glebe Lands Act, 1888, is kept on foot by L. P. Act, 1925, s. 7 (3). Ecclesiastical trusts are within s. 29 of the S. L. Act, 1925, hence the powers of an incumbent now enable him, subject to the requisite consents and orders being obtained, to carry out any transaction which a tenant for life could carry out. The estate and power of incumbents.

the Rules made in pursuance of the Glebe Lands Act, 1888, to the Minister to approve the sale and shall use his best endeavours to procure such approval.

(4) In case such approval shall not be obtained to this sale under these conditions (with or without such variations as may be assented to by both parties) within three months from the date of the sale or such other extended time as may be agreed upon by the Vendor and Purchaser, then and in such case the sale shall be void.

(5) The Purchaser shall on failure to obtain such approval pay the charges, costs, expenses and fees incurred by the Vendor in or about the aforesaid application.

(6) If the Minister shall (with or without such variation as aforesaid) approve the sale, then and in such case the Vendor shall furnish to the Purchaser a copy of the Order authorising the sale to enable the conveyance to be prepared, and on completion shall hand over the Order to the Purchaser.

No. 20.

Sale under the Ecclesiastical Leasing Acts.

(1) The property forms part of the —— lands (*l*) of the Vicarage and Parish Church of ——, and the sale shall be carried out in all respects in accordance with the provisions of the Ecclesiastical Leasing Acts.(*m*)

(2) The Vendor will at his own cost serve notice (*n*) of the intended sale on the Bishop of the diocese.

(3) This sale is conditional on the approval (*o*) thereof by the Ecclesiastical Commissioners (*p*) and on the consent thereto by the patrons (*q*) of the benefice being obtained.

(4) The Vendor will forthwith apply for and use his best endeavours to procure such approval and consent, and in case such approval shall not be obtained to this sale under these

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The Ecclesiastical Leasing Acts.

(*l*) Except in cases to which the Act does not apply, sales are now generally made under the Glebe Lands Act, 1888. It should be ascertained that the property does not come within the exceptions mentioned in s. 9 of the Ecclesiastical Leasing Act, 1842. See also last note as to powers under such Act being kept on foot, and as to the estate and powers of incumbents.

(*m*) This is the short title: Ecclesiastical Leasing Act, 1858, s. 13. The whole of this form applies to registered land.

Notice required on sale of glebe land under Ecclesiastical Leasing Acts.

(*n*) S. 1 of the Ecclesiastical Leasing Act, 1858, which required three months' notice to the bishop of the diocese, is amended by s. 11 of the Glebe Lands Act, 1888, and see the Sale of Glebe Lands Rules. 1909; 1909, W. N. 317, where the form of notice is given.

Consents necessary on sale of glebe land under Ecclesiastical Leasing Acts.

(*o*) See *Ecc. Commrs.* v *Pinney* [1899], 1 Ch. 99; 68 L. J. Ch. 30.

(*p*) See Ecclesiastical Leasing Act, 1858, s. 1.

(*q*) See Ecclesiastical Leasing Act, 1842, s. 1. The same consents are required for a sale under the Act of 1858 as for a lease under the Act of 1842; see s. 1 of the Act of 1858.

conditions (with or without such variations as may be assented to by both parties) within three months from the date of the sale or such other extended time as may be agreed upon by the Vendor and Purchaser, then and in such case the sale shall be void [and the Purchaser shall forthwith return all abstracts and other papers in his possession and shall not be entitled to any claim for damages or otherwise (*r*)].

(5) The Vendor, in accordance with the usual practice, shall not be required to give any covenant for title express or implied.

No. 21.

Commencement with Inclosure Award.

(1) The abstract of title to Lot —— shall commence with the —— Inclosure Award dated, &c., under which the same was allotted to ——.

(2) The Purchaser shall not be entitled to call for the title to the property, in respect of which such allotment was made, but shall assume that the allottee was seised thereof in fee simple in possession, free from incumbrances.

(3) The validity and regularity of the Award in all respects shall be assumed.(*s*)

No. 22.

With exchange under Inclosure Award.

(1) The abstract of title to Lot —— shall commence with the —— Inclosure Award dated —— ,under which the same was allotted to —— in exchange for other land.(*t*)

(2) The Purchaser shall not be entitled to call for the title to the last-mentioned land, but shall assume that the allottee was seised thereof in fee simple in possession, free from incumbrances.

(*r*) The words within square brackets are only required where an abstract is furnished.

Allotment under Inclosure Awards.

(*s*) In the absence of stipulation, on the purchase of allotments under an Inclosure Act, the title to the property in respect of which the allotment is made must be deduced down to the date of the award, and if the allotment is made in respect of lands held under different titles, all the titles must be shown: Dart, 7th ed., 322; and see *Re Alms Corn Charity* [1901], 2 Ch. 750; 71 L. J. Ch. 76. The allotment will be of the same tenure as the land in respect of which it was made, unless, before 1926, in the case of copyhold land the lord of the manor and the allottee consent to the allotment being freehold, and a declaration to this effect is made in the award: Inclosure Act, 1845, ss. 94, 147; Inclosure Act, 1847, s. 6. If the land acquired under the Inclosure Award was originally copyhold it will be converted into freehold by L. P. Act, 1922, s. 128, but will remain subject to manorial incidents till the same are extinguished under Pt. VI of that Act. So long as it remains subject to manorial incidents dispositions thereof must be produced to the steward for endorsement under s. 129 of that Act.

Enfranchised land.

Exchanges under Inclosure Awards.

(*t*) If the title to the land given in exchange is defective, the defect is transferred to the land taken in exchange: *Minet* v. *Leman* (1855), 24 L. J. Ch., at p. 548; *Jacomb* v. *Turner* [1892], 1 Q. B., at p. 51.

(3) The validity and regularity of the said Award in all respects shall be assumed.

No. 23.

With statement in Inclosure Award.

(1) Lots —— and —— appear in a schedule and plan annexed to the —— Inclosure Award dated ——, and are therein expressed to be old inclosures belonging to ——.

(2) The said schedule and plan shall be deemed sufficient evidence of the seisin in fee simple in possession, free from incumbrances, of the said ——; and no earlier title to the said Lots shall be required.

No. 24.

Sale of superfluous land under Lands Clauses Acts.

(1) The abstract of title shall commence with the conveyance dated the —— day of ——, 19—, to the Vendors, who acquired the property under statutory powers for the purposes of their undertaking.

(2) The Vendors are selling the property as superfluous land under the provisions of the Lands Clauses Consolidation Act, 1845.(*u*)

(3) The Purchaser shall [not, unless a land charge has been registered to protect the same, be entitled to make any objection on account of the property not having being offered to the persons (if any) entitled to pre-emption under the provisions of the said Act, and shall in other respects] assume that the requirements of the said Act have been complied with, and shall not make any requisition or inquiry or take any objection in respect thereof.

No. 25.

Where property was conveyed as superfluous land.

(1) The abstract of title shall commence with the Conveyance dated the —— day of —— to the Vendor by the —— Company.

(2) The property was acquired by the said Company under statutory powers for the purposes of their undertaking, and was sold to the Vendor as superfluous land under the provisions of the Lands Clauses Consolidation Act, 1845.

Sale where land acquired under Lands Clauses Acts.

(*u*) See Lands Clauses Act, 1845, ss. 127-131; *G. W. Ry.* v. *May* (1874), L. R. 7 H. L. 283; 43 L. J. Q. B. 233. The land must be sold within the time referred to in s. 127. Where possible the property should be offered to the persons (if any) having the right of pre-emption (s. 128), but this is often impracticable. The whole of this form, except para. 1 and the words in square brackets in para. 3, applies to registered land.

Rights of pre-emption.

Rights of pre-emption are capable of release and take effect as equitable interests (L. P. Act, 1925, s. 186); a tenant for life has power with the consent of the trustees of the settlement, to release such rights (S. L. Act, 1925, s. 58 (2)); hence trustees for sale (L. P. Act, 1925, s. 28) and personal representatives (Ad. of E. Act, 1925, s. 39), have corresponding powers. A right of pre-emption may be protected by registration as a land charge: L. C. Act, 1925, s. 10, Class C. (iv); or, where the land affected is registered, by a caution · L. R. Act, 1925, s. 59 (1) (2).

(3) The Purchaser shall not make any inquiries or require any evidence [besides the usual certificate of search for land charges] as to whether the property was offered to the persons entitled to pre-emption under the provisions of the said Act, or whether the requirements of the said Act relating to the sale of such lands were duly complied with.(*v*)

No. 26.

Where superfluous lands vested in the Vendor under the Lands Clauses Acts.

(1) The abstract of title to the property shall commence (except in respect to a small strip of land) with a Conveyance on sale dated the —— day of ——, 19—.

(2) The said strip of land was acquired in the year 19— by a Company acting under statutory powers, and subsequently as superfluous land became vested in the Vendor as an adjoining owner under the provisions of section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845.

(3) The Vendor shall not be required to distinguish this strip of land, and the Purchaser shall assume that the said Company were unable to dispose of the same and shall not make any inquiry or objection in respect of the title thereto.(*w*)

No. 27.

Commencement of title on sale by an unincorporated Building Society.

(1) The abstract of title shall commence with a mortgage dated the —— day of ——, 19—, to the then trustees of the —— Building Society.

The mortgage term is vested in the Vendors as the present trustees of that Society, which is unincorporated.

(3) A copy of the [amended] rules of the Society will be produced, and the Purchaser shall require no further evidence to show who were the trustees of the Society on the 1st January, 1926. But as from that date transfers of the mortgage have been made on each appointment of new trustees and these will be included in the abstract. The Vendors are selling under their statutory power as mortgagees and will accordingly as mortgagees convey the fee simple [*or in the case of leasehold property* the head term] affected by their mortgage.(*x*)

(*v*) See Lands Clauses Acts, 1845, ss. 127-131. Former owners and adjoining owners have rights of pre-emption in respect of superfluous lands, other than lands in a town or lands built upon or used for building purposes; see also last note.

Sale, where property formerly superfluous land. Lands Clauses Act.

(*w*) Superfluous land, acquired for the purposes of an undertaking, which remains undisposed of after the provisions of the Act have been complied with vests in adjoining owners: Lands Clauses Act, 1845, s. 127. The effect of this section is saved by L. P. Act, 1925, s. 7 (1).

Superfluous land vested in adjoining owner.

(*x*) See Wurtzburg's Law Relating to Building Societies, 5th ed. In the case of an unincorporated society there is no statutory provision for the registration of appointments of trustees; accordingly the practice was to insert the names of the trustees in the rules, and upon new appointments to

Unincorporated Building Societies.

No. 28.

Short abstract of title to small Lots.

(1) A Purchaser whose purchase-money does not exceed £—— will be furnished with a short abstract sufficient to enable him to prepare his conveyance, and shall not, except upon the terms hereinafter mentioned, require delivery to him of any other abstract of title, but may within eight days after the sale [*or in a sale by the Court* after the certificate of the result of the sale has become binding] attend at the office of Messrs.—— at ——, the Vendors' solicitors, during working hours, to examine and take extracts from a full abstract prepared in accordance with these conditions.

(2) Nevertheless, on giving notice in writing to the Vendors' solicitors requesting an abstract, and on paying to them the cost of copying within four days after the sale [*or* after the certificate of the result of the sale has become binding], he shall have delivered to him a full abstract prepared in accordance with these conditions.

(3) Whether he so attend or not, he shall be bound by these conditions, and if a full abstract is not required he shall be bound in the same way as if a full abstract had actually been delivered to him on the eighth day after the sale [*or* after the certificate of the result of the sale has become binding] and a full abstract shall be deemed to have been actually delivered to him on that day.

(4) References in the conditions to the date of delivery of an abstract shall apply either to the date of delivery of the full abstract or the date on which such abstract shall be deemed to have been delivered, as the case may require.(*y*)

(5) Time shall be of the essence of this condition.

No. 29.

Short abstract of title to small Lots (short form).(*z*)

(1) The abstract of title shall commence with a conveyance on sale dated the —— day of ——, under which the Vendor holds, but the Purchaser shall on request in writing made to the Vendor's

alter the rules or provide by the original rules that new appointments should be certified as alterations. On 1st January, 1926, the mortgage term would become vested in the then trustees of the Society (L. P. Act, 1925, 1st Sch., Pts. II, VII or VIII); but as s. 7 (3) of that Act only saves statutory powers of vesting legal estates it became necessary after that date to take transfers (s. 114) of the mortgage, for the purchaser has an indefeasible right to require the legal estate to be conveyed to him: *ib.*, s. 42.

(*y*) In addition to this clause a condition must be added fixing the commencement of both the long and short abstracts.

Registered land.

(*z*) In the case of registered land, a purchaser at less than £1,000 pays for all copies or abstracts of entries in or plans or documents referred to on the register: L. R. Act, 1925, s. 110. If it is intended to furnish him with anything (*e.g.*, a gratis copy of the entries in the register) in excess of his rights, the fact should be stated. See forms for this, Nos. 167-9 *inf.*

solicitors within four days after the delivery of the abstract, and on paying the cost of copying, be entitled to receive an additional abstract commencing with a Conveyance on sale dated, &c.

(2) If within the four days he shall not have required in writing the delivery of such additional abstract, and tendered the cost of copying the same, he shall be deemed to have dispensed with such additional abstract.

(3) Time shall be of the essence of this condition.

No. 30.

No abstract for small Lots unless required and paid for.

(1) The Vendor will deliver an abstract of his title [to the Purchaser of the whole property if the whole be sold in one Lot, but in case of a sale in separate Lots then only] to each Purchaser whose purchase-money shall exceed the sum of £——.

(2) Each Purchaser whose purchase-money shall not exceed that sum shall on request in writing made to the Vendor's solicitors, and on payment to them within seven days after the sale of the sum of £——, be entitled to receive an abstract of the title to the Lot or Lots purchased by him.

(3) If he shall not within such seven days have required in writing the delivery of an abstract of title, and tendered the said sum of £ —— in payment for the same, he shall be deemed to have accepted the Vendor's title.

(4) In that case a form of conveyance settled by counsel will be furnished to him by the Vendor [and the condition relating to the delivery of requisitions shall cease to apply.]

(5) Time shall be of the essence of this condition.

No. 31.

No abstract for small Lots unless required and paid for (another form).

(1) The Vendors will deliver to every Purchaser whose purchase-money [exclusive of the value of the timber and fixtures] shall amount to £—— or upwards, or to his solicitor, an abstract of title to the Lot or Lots purchased by him.

(2) No Purchaser whose purchase-money [exclusive as aforesaid] shall be less than £—— shall be entitled to an abstract at the Vendor's expense, but he may have an abstract (if he so desires) at his own expense, and may inspect at the office of the Vendor's solicitors a general abstract of title comprising the Lot or Lots purchased by him.

(3) The title to the several Lots shall commence, &c.(*a*)

Purchaser of several lots entitled to one abstract only.

(*a*) On a sale in lots, a purchaser of two or more lots held wholly or partially under the same title is entitled to one abstract only of the common title, except at his own expense: L. P. Act, 1925, s. 45 (5). When some of the lots are of

No. 32.

Commencement at or before statutory period.

(1) The abstract of title shall extend over the statutory period of thirty years.

(2) No inquiry, requisition, or objection shall be made in respect of the title shown by the recitals contained in any deed dated thirty years or upwards before the day of sale.

(3) All recitals contained in any deed dated —— years or upwards before the day of sale of any documents dated —— years or upwards before that day, and which are not in the Vendor's possession or in his power to produce, shall be taken as conclusive evidence of the material contents and due execution of any document so recited, and no further evidence of such contents, whether by production of the original or otherwise, shall be required, though the same may create a power (*b*) appearing to be exercised by an abstracted document.

(4) Where the abstract commences with a Will the testator is to be deemed to have been seised in fee simple at the date of his [Will and thenceforth up to his (*c*)] death.

No. 33.

Title to consist of conveyances to Vendor.

THE title to the property being well known in the neighbourhood no Purchaser shall require any other evidence of such title than an abstract of the respective conveyances of the Lot or Lots purchased by him to the present Vendor (the dates whereof are referred to in the particulars),(*d*) and of any subsequent dealings by him relating to the legal estate.

No. 34.

Commencement where Vendor has acquired title under the Limitation Acts.(*e*)

THE Vendor shall not be required to show or furnish any title to Lot ——, or any evidence of such title, other than:—

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small value, the above condition will be found useful. As to registered land see note to form No. 28, *supra*.

(*b*) See L. P. Act, 1925, s. 45 (1) (i) (10).

(*c*) The words in these brackets are not required where the Will is dated after 1837: Wills Act, 1837, s. 24.

(*d*) This condition should not be used except where the lots are of small value. The dates of the conveyances should be referred to, otherwise the condition may be unnecessarily depreciatory. Where there are a large number of conveyances creating the roots of title, it may simplify matters to refer to them in the particulars or in a schedule.

Acquiring title by possession.

Foreshare and aftershare.

(*e*) See *Re Atkinson* v. *Horsell* [1912], 2 Ch. 1; 81 L. J. Ch. 588, where a possessory title was forced by the court on a purchaser; and as to evidence of the acquisition of a possessory title: *Kynoch* v. *Rowlands* [1912], 1 Ch. 527; 81 L. J. Ch. 340. The effect of the Limitation Acts is saved by L. P. Act, 1925, s. 12. Indeed their operation is extended for many disabilities are removed. For instance, settled land will always be vested in a person of full age. As to registered land, see L. R. Act, 1925, s. 75. As to acquiring a title to the soil where rights of foreshare and aftershare have existed: 55 Sol. J. 379-80.

(1) A statutory declaration, to be furnished at the Purchaser's expense if he requires it, from an old inhabitant of the parish in which the property is situated to the effect that the father of the Vendor, who died intestate on the —— day of ——, was in possession of the last-mentioned Lot at his death [and that the Vendor was the heir-at-law of his father, and took out letters of administration (which will be abstracted and produced) to his estate under Part I of the Land Transfer Act, 1897, his mother having died in the lifetime of his father, *or* and that the Vendor being an only child took out letters of administration (which will be abstracted and produced) to his estate and was the only person interested under the Administration of Estates Act, 1925, to the estate of his father, his mother having died in the lifetime of his father].

(2) A counterpart of the lease under which the present tenant has held the said Lot for —— years and upwards of the present Vendor.

No. 35.

Where a voluntary conveyance appears on the title.

THE abstract of title shall commence with a conveyance on sale dated the —— day of ——, and no objection shall be taken on the ground that the property was in the year —— conveyed by A. B. (then the owner) to his son by a voluntary conveyance, nor shall the Vendor be bound to furnish any evidence as to the financial position of the said A. B. at any time.(*f*)

No. 36.

As to title acquired by adverse possession by a mortgagee.

(1) The abstract of title shall commence with a Mortgage dated the —— day of ——,

Voluntary conveyances.

(*f*) Under the L. P. Act, 1925, s. 173, a voluntary conveyance whenever made in good faith is not defeated by a subsequent conveyance for value made after 28th June, 1893, as being fraudulent: see *National Bank Ltd.* v. *Behan* [1913], 1 Ir. R. 512. The mere fact that a voluntary conveyance appears on the title does not justify the purchaser in repudiating the contract: *Noyes* v. *Paterson* [1894], 3 Ch. 267; 63 L. J. Ch. 748. The estate of the voluntary grantee is liable to be defeated by the bankruptcy of the grantor within two years from the conveyance: Bkcy. Act, 1914, s. 42; *Re Tankard* [1899], 2 Q. B. 57; 68 L. J. Q. B. 670; also by the bankruptcy within ten years if the grantor was not solvent at the date of the grant without the aid of the property comprised therein: s. 42. But a purchaser in good faith for value claiming under a settlement affected by s. 42 has a good title against the trustee in bankruptcy: *Re Brall* [1893], 2 Q. B. 381; 62 L. J. Q. B. 457. The settlement is not void against the trustee in bankruptcy of the settlor from its date, but from the time when the trustee's title accrues: *Re Carter and Kenderdine* [1897], 1 Ch. 776; 66 L. J. Ch. 408. This principle was extended in *Re Hart* [1912], 3 K. B. 6; 81 L. J. K. B. 1213; *Re Shrager* [1913], 108 L. T. 346; *Re Branson* [1914], 3 K. B. 1086; 83 L. J. K. B. 1673. As to what is a settlement within the section, see *Re Plummer* [1900], 2 Q. B. 790; 69 L. J. Q. B. 936.

(2) The mortgage debt thereby secured and the property comprised in the mortgage were vested in the Vendors by a Transfer dated the —— day of ——; since that date they have been in possession or in receipt of the rents and profits of the property, without having given any acknowledgment to the mortgagor of his title to the right of redemption.

(3) On the —— day of —— 19—, the Vendors by deed enlarged the mortgage term acquired under the Law of Property Act, 1925, into a fee simple.(*g*) Accordingly the Purchaser shall assume that the Vendors are entitled thereto free from all right of redemption on the faith of a statutory declaration as to the above facts to be made by the Vendors' agent at the cost of the Purchaser, if he requires such declaration to be made.

No. 37.

Sale by mortgagees in possession during the war.

THE abstract of title shall commence with a conveyance on sale dated —— 19—, by mortgagees in possession (*h*) under their statutory power of sale, and the Purchaser shall on the faith of a recital contained in that conveyance [*or* on the faith of a statutory declaration, &c.] assume that the mortgagees entered into possession before September, 1914.

No. 38.

Enlargement of long term into fee simple, the Lease being lost.

(1) Part of the property [Lots —— and ——, or parts thereof] was [were] demised with other land for a term of 500 years from, &c., by a Deed dated, &c.

(2) This term, so far as regards the part now offered for sale of the premises comprised therein, has been enlarged into a fee simple, but the Vendor[s] has [have] not the original, or any copy

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Enlargement of long terms and acquisition of leasehold reversions.

(*g*) Mortgages of the fee simple are converted into mortgages for a term of 3,000 years by L. P. Act, 1925, 1st Sch., Pt. VII, and leasehold mortgages by assignment are converted into mortgages by sub-demise: *ib.*, Pt. VIII. Where a mortgagee of freeholds acquires a title under the Limitation Acts he can convert his mortgage term into a fee simple: *ib.*, s. 88 (3); a mortgagee of leaseholds can by deed vest the leasehold reversion in himself: *ib.*, s. 89 (3). See also *Blaiberg* v. *Keeves* [1906], 2 Ch. 175; 75 L. J. Ch. 464. As to the enlargement of a term of not less than 300 years, of which not less than 200 years is unexpired, see L. P. Act, 1925, s. 153; which does not apply to a term liable to be determined by re-entry for condition broken or created by sub-demise out of the superior term itself incapable of being enlarged.

Courts (Emergency Powers) Acts.

(*h*) See Courts (Emergency Powers) Acts, 1914 to 1917; War Emergency Laws Continuance Act, 1920; Expiring Laws Act, 1922; Expiring Laws Continuance Act, 1923. Where these Acts apply and the mortgagee sold without entering into posssession an order of the court authorising the sale or entry is an essential part of the title: *Braybrooks* v. *Whaley* [1919], 1 K. B. 435; 88 L. J. K. B. 577.

Leave of the court to sell, when Purchaser concerned with.

Where the mortgage is made after 1925 a purchaser is not concerned to see that leave of the court to sell is obtained: L. P. Act, 1925, s. 104 (2). If there is an action to restrain the sale this can be registered as a pending action and a purchaser would then be concerned.

of the Deed of demise, nor any information relating to it other than such as appears in the abstract, and it shall be assumed, unless the contrary appears, that the term has been duly enlarged into a fee simple.(*i*)

No. 39.

Title to commence with Lease and conveyance of reversion in fee.

THE abstract of title shall commence with a Lease dated the —— day of ——, whereby A. B. demised the property to C. D. for —— years, from the —— day of —— and the title to the reversion in fee expectant on the Lease shall commence with a Conveyance dated the —— day of ——, whereby E. F. conveyed such reversion in fee simple to G. H.; the Purchaser shall assume that the said A. B. had power to grant the Lease, and that the said E. F. had power to dispose of the reversion in fee simple as aforesaid.(*j*)

No. 40.

Enfranchised land free from or subject to manorial incidents.

AS to Lot ——, which was formerly copyhold of the manor of ——,

(1) The abstract of title to the former copyhold interest shall commence with a Surrender and Admittance on a purchase in the year —— [*or* to the former beneficial interests in the copyholds which enabled A. B. to acquire the entire fee simple under Part V of the Law of Property Act, 1922, as amended, shall commence with, &c., *this document will not necessarily be a customary assurance, it is the true title off the court rolls which is material*].

(2) The title to the freehold [and to the minerals] shall commence with the Deed [*or* Award] of enfranchisement, dated in the year —— [which contains no [a] release of the rights reserved by the Copyhold Acts to the lord]. [The sale is made subject to to the rights so reserved] (*k*) [*or* and the title showing the

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(*i*) See L. P. Act, 1925, s. 153, reproducing Conv. Act, 1881, s. 65, and Conv. Act, 1882, s. 11, with amendments: sub-ss. 4 and 5 as to a rent not exceeding £1 per annum which has not been collected or paid for twenty years, and sub-s. 6 enabling a married woman, whether or not restrained, to enlarge a term without the concurrence of her husband.

(*j*) This condition should only be used where the lease is dated before the commencement of the title to the freehold reversion, see *Williams* v. *Spargo* [1893], W. N. 100.

Enfranchised copyholds.

(*k*) See the Copyhold Act, 1894, s. 23; also L. P. Act, 1922, 12th Sch., para. 5. The particulars of sale should mention any reservations in favour of the lord: *Upperton* v. *Nickolson* (1871), L. R. 6 Ch. 436; 40 L. J. Ch. 401; *Bellamy* v. *Debenham* [1891], 1 Ch. 412; 60 L. J. Ch. 166. Under the L. P. Act, 1922, s. 44 (6), (7), the purchaser is not to call for the title to make the enfranchisement, or to give a receipt for the compensation money paid on the extinguishment of the manorial incidents. A covenant to surrender, apart from stipulation, would not have been a good commencement to the legal customary interest, but now the material matter, where the land is enfranchised under

extinguishment of the manorial incidents including [*or* excluding] the minerals and sporting rights, shall commence with a Compensation Agreement dated —— [*or* an Award of the Minister of Agriculture dated ——].

No. 40A.

Enfranchised land subject to manorial incidents.

THE abstract of title to Lot ——, which was formerly copyhold of the manor of ——, shall commence as follows :—

(1) As to the former beneficial interests in the copyholds which enabled A. B. [and C. D.] [*or* the X. Company Limited] to acquire the entire fee simple subject to manorial incidents under Part V of the Law of Property Act, 1922, as amended, with a Deed of Covenant to Surrender dated the —— day of ——.

(2) As to the legal customary estate of inheritance with the Surrender (steward's copy) dated the —— day of ——, and the Admission made pursuant thereto [*or* with a Deed dated the —— day of ——, being a bargain and sale by the executors of a testator who died in the year ——, and the Admission made pursuant thereto] [*or* with a Re-settlement dated —— under which the said A. B. was a tenant for life of full age on the 1st January, 1926] [*or* shall commence with the Probate of a Will dated —— and proved on the —— day of —— of R. T., who died, &c., the former equitable owner of the customary estate in fee simple under which the said A. B. and C. D. were on the 1st January, 1926, the executors] [*or* shall commence with a Covenant to Surrender dated —— on trust for sale under which the said A. B. and C. D. were, on the 1st January, 1926, the trustees for sale] [*or* shall commence with a Declaration of Trust dated —— whereby S. T., who was then tenant on the court rolls declared that he held the property in trust for the said X. Company, Limited, for a customary estate in fee simple]. And no objection shall be made on account of the manorial incidents being subsisting, but the same will, if the purchaser so desires, be extinguished by a Compensation Agreement or by Notice to be served at the cost of the Purchaser (by whom the compensation money shall be provided) before actual completion, but no objection shall be made if such extinguishment cannot be effected otherwise than by Notice on or before the date fixed for completion.

L. P. Act, 1922, Pt. V, is to trace the person in whom the fee simple becomes vested under the 12th Sch. and L. P. Act, 1925, 1st Sch., Pt. II, independently of the former legal customary title.

No. 41.

Commencement of title to leaseholds. (*n*)

(1) The abstract of the title shall commence as provided by the General Conditions of 1925.(*l*)

(2) [The receipt for the last payment of rent accrued due under the lease not being in the Vendor's custody, the Purchaser shall assume (on the faith of the Vendor being in possession of the property and without production of the receipt) that the covenants and conditions in the Lease have been duly performed and observed up to the time of completion, or that all breaches (if any) of such covenants and conditions have been waived.](*m*)

(3) [The production of the receipt for the last payment due for rent shall be conclusive evidence that all the covenants and conditions in the Lease have been observed and performed up to the date of completion, or that all breaches (if any) of such covenants and conditions have been waived.](*o*)

No. 42.

Title to consist of Lease and last assignment.

THE property [with other property] is held under a Lease dated the —— day of ——, and (after divers mesne assignments) was assigned to the Vendor in the year 19—. The title shall consist of the original Lease, and of the Assignment to the Vendor, and the Purchaser shall not require the production or make any requisition or objection in respect of the intermediate title.(*p*)

(*l*) In the case of sales by private contract a copy of the lease should be sent to the purchaser with the draft contract.

(*m*) See L. P. Act, 1925, s. 45 (2), (3). The part within square brackets, or a similar clause, is required where the receipt has been lost: see *Re Moody and Yates* (1885), 28 Ch. D. 661; 30 *ib.*, 344; 54 L. J. Ch. 584, 886. The case of a peppercorn rent is covered by the Conditions of 1925. This condition will not preclude the purchaser from requiring evidence that the rent is not in arrear. A letter from the lessor's agent to that effect should be procured. The vendor is bound to disclose onerous and unusual covenants: *Re Haedicke and Lipski* [1901], 2 Ch. 666; 70 L. J. Ch. 811; *Molyneux* v. *Hawtrey* [1903], 2 K. B. 487: 72 L. J. K. B. 873. As to cases where a covenant is treated as onerous or unusual: *Allen* v. *Smith* [1924], 2 Ch. 308; 93 L. J. Ch. 538. If the lease is an underlease the fact should be stated: *Re Beyfus and Masters* (1888), 39 Ch. D. 110.

Sale of leaseholds. Evidence of payment of rent, disclosure of covenants.

(*n*) Paras. (2) and (3) of this form apply to registered land.

Registered land.

(*o*) Under L. P. Act, 1925, s. 45 (2), (3), on production of the last receipt for rent the purchaser is bound to assume that the covenants and conditions have been performed and observed, "*unless the contrary appears.*" In such case the words in square brackets should be used: see *Barnett* v. *Wheeler* (1841), 7 M. & W. 364; 10 L. J. Ex. 102; *Re Highett and Bird* [1903], 1 Ch. 287; 72 L. J. Ch. 220; explained in *Re Allen and Driscoll* [1904], 2 Ch., at p. 231; 73 L. J. Ch. 614; see also *Lawrie* v. *Lees* (1881), 7 A. C. 19; 51 L. J. Ch. 209; *Re Taunton, &c., Soc. and Roberts* [1912], 2 Ch. 381; 81 L. J. Ch. 690; and article in 56 Sol. J. 759. For the covenants which will be implied by a purchaser of leaseholds, see L. P. Act, 1925, s. 77, and 2nd Sch., Pts. IX and X.

(*p*) The Conditions of 1925 when applied fix the purchaser with notice of the contents of the lease. As to perpetually renewable leases being converted

No. 43.

Sale of Lots held under one Lease.

ASSURANCES shall, to give effect to the particulars, be carried out under the provisions of sub-section (3) of clause 27 of the General Conditions of 1925.(*q*) [*On a sale by the court add*:— Save that all differences shall be settled by the Judge in Chambers instead of by arbitration.]

No. 44.

The same (another form).

ALL the Lots [Lots ——] being held under the same Lease, the purchases thereof shall be carried into effect in manner following:—

(1) If all the Lots are sold the Purchaser whose purchase-money is the largest shall take an assignment [*or, if the title is registered*, a transfer] of the Lease and grant underleases of the other Lots to the Purchasers thereof respectively, but if any Lot remains unsold the Vendor shall retain the Lease and grant underleases of the Lots sold to the Purchasers thereof respectively.

(2) Every underlease under this condition shall be for the residue of the term granted by the principal Lease except the last day thereof, and at the apportioned rent mentioned in the particulars as payable in respect of the Lot or Lots comprised therein, and the same shall contain a covenant by the underlessee to pay the apportioned rent and observe and perform the lessee's covenants in the Lease so far as the same relate to such Lot or Lots and the usual condition of re-entry for non-payment of rent or breach of covenants.

No. 45.

Purchasers to have underleases from the Vendor.

UNLESS all the Lots are sold to the same Purchaser, in which case the Lease shall be assigned to him, the Vendor will retain

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into long terms, see L. P. Act, 1922, 15th Sch., as amended by L. P. (Amendment) Act, 1924, 2nd Sch., para. 4. As to leases for lives, see L. P. Act, 1925, s. 149 (6). As to leases generally, see L. P. Act, 1925, Pt. V. If the property offered for sale is held with other property under one lease the fact should be stated, see *Re Lloyds Bk. & Lillington* [1912], 1 Ch. 601, 81 L. J. Ch. 386, otherwise the purchaser may object on the ground that he will be liable to eviction under the power of re-entry for breaches committed in respect of the remaining property. But, in view of L. P. Act, 1925, s. 146 (4), query whether the doctrine in *Darlington* v. *Hamilton* (1854), Kay 550, 558, ought any longer to be applied. In this case provision must be made as to how the rent is to be borne; see following forms.

Where part of property held under a Lease is sold.

Grant of underlease by persons in a fiduciary position for carrying out a sale.

(*q*) This is the most usual and convenient method of dividing up the rent and carrying out the sales. As to the proper covenants to be given, see *Brown* v. *Paull* (1856), 2 Jur. N. S. 317; Dart, 7th ed., 572. Underleases could not formerly have been granted where the vendors were trustees under an ordinary trust for sale owing to the decision in *Re Walker and Oakshott* [1901], 2 Ch. 383; 70 L. J. Ch. 666; which has now been overruled by *Re Judd and Poland* [1906], 1 Ch. 684; 75 L. J. Ch. 403. A tenant for life is now a trustee of the settled land; he can make title in a similar way, as can also personal representatives; the same principle applies. This and the next four forms apply to registered land.

Registered land.

the Lease and grant underleases to the several Purchasers of the Lots purchased by them respectively, and the following provisions shall apply :—

(1) Each underlease shall be for the residue of the term granted by the principal Lease except the last day thereof and at the apportioned rent mentioned in the particulars as payable in respect of the Lot or Lots comprised therein.

(2) Each underlease shall contain a covenant by the underlessee to pay the apportioned rent and observe and perform the lessee's covenants in the Lease (other than the covenant to pay rent) so far as the same relate to such Lot or Lots and the usual condition for re-entry on non-payment of rent or breach of covenant.

(3) If no Lot remains unsold the Vendor shall assign the Lease to the Purchaser whose purchase-money is largest, or in the case of equality to the Purchaser of the first of such Lots sold, subject to the underleases granted by the Vendor to the other Purchasers.

No. 46.

Vendor to execute assignments to Purchasers of parts of land comprised in a lease at apportioned rents.(*r*)

(1) The Vendor and all other necessary parties (if any) shall execute to the Purchaser of each Lot a proper assignment [*or if the title is registered*, transfer] of that Lot, subject to the apportioned rent mentioned in the particulars as payable in respect thereof, and the Purchaser shall execute a counterpart thereof.

(2) In every assignment [*or* transfer] a covenant by the Purchaser in the terms set out in Part X of the Second Schedule to the Law of Property Act, 1925, shall be implied [with the variation that the covenant for indemnity shall be extended to *set out any variation desired*].

(3) The Purchaser shall also charge the purchased premises with all money payable by him under his implied covenant [as so extended].

(4) The counterpart of each assignment [*or* transfer] will be retained by the Vendor, who will give a statutory acknowledgment [and undertaking (*s*)] in respect thereof, as well as of other documents (if any) retained by him, to the other Purchasers.

(*r*) This form should not generally be used when the vendor's covenants are onerous. As to the implied covenants, see L. P. Act, 1925, s. 77, and as to the implied remedies, *ib.*, s. 189.

(*s*) To be omitted if the vendor is a trustee. Where land is held subject to a perpetual rentcharge and parts thereof are sold the rentcharge being equitably apportioned without the consent of the owner of the rent, it is frequently expedient to effect the sales by means of demises at a rent equal to the apportioned rentcharge for a term of say 2,000 years *sans* waste

No. 46A.

Vendor to execute conveyances to Purchasers of parts of land affected by a rent-charge at apportioned rent-charges. See footnote (*r*) last page.

(1) The Vendor, &c. (*as in last form, substituting* "conveyance" *for* "assignment" *and* "rentcharge" *for* "rent" *and* "duplicate" *for* "counterpart").

(2) In every conveyance a covenant by the Purchaser in the terms set out in Part VIII of the Second Schedule to the Law of Property Act, 1925 (*continue as in last form*).

(3) The Purchaser (*continue as in last form*).

(4) The duplicate of each conveyance will (*continue as in last form*).

No. 47.

Commencement of title to leaseholds formerly renewable.

(1) The abstract of title shall commence with the Lease dated the —— day of ——, which was granted in consideration of the surrender of a prior Lease, and contained a provision for perpetual renewal every fourteenth year (*or otherwise, as the case requires*). The Vendor shall not be required to show any title to the surrendered Lease, or to obtain the production thereof.(*t*)

(2) The lease has been endorsed pursuant to paragraph 14 of the Fifteenth Schedule to the Law of Property Act, 1922, and that endorsement is expressed to be signed by the then lessor and lessee and shows that the aggregate yearly rent now payable amounts to the sum of £— accordingly the Purchaser shall assume that by virtue of that Act a term of 2,000 years became vested in the then lessee calculated from the date on which the then subsisting term commenced and shall not make any objection in regard to the said endorsement.

No. 48.

Commencement of title to a lease formerly for life at a rent.

(1) The abstract of title shall commence with a Lease dated —— to A. B. for her life at a yearly rent of £——.

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and to make the purchaser enter into covenants, as respects the land demised, corresponding with the covenants in the grant of the land reserving the rentcharge. The entire fee simple affected by the rentcharge would then be retained by the vendor, who would have the rent reserved by the demises out of which to pay the rentcharge and a right to re-enter on breach of the lessee's covenants. A trust may be imposed on the rents reserved to pay thereout the rentcharge. Other remedies may be conferred on the vendor; Forms Nos. 43-45 can be adapted to carry out sales in this manner.

Title to be shown to leaseholds formerly renewable.

(*t*) Para. 1 of this form applies to leasehold land registered with possessory title only: para. 2 is applicable in any case except that of an absolute title. On the sale of renewable leaseholds, where the lease is expressed to have been granted in consideration of the surrender of a prior lease, the vendor must show the title to the surrendered lease in the absence of any stipulation to the contrary: *Hodgkinson* v. *Cooper* (1846), 9 Beav. 304; 15 L. J. Ch. 160. If a good leasehold title is registered under the L. R. Act, 1925, this decision would not be applicable. As to leaseholds formerly perpetually renewable, see L. P. Act, 1922, 15th Sch., as amended by para. 4 of the 2nd Sch. to the L. P. (Amendment) Act, 1924. Perpetually renewable copyholds are converted into estates in fee simple: L. P. Act, 1922, s. 135. See also General Conditions of 1925, Clause 15.

(2) A statutory declaration will be furnished at the expense of the Purchaser if he so requires to prove that the said A. B., who was born on the —— day of —— 19—, is still living, accordingly the Purchaser shall assume that under sub-section (6) of section one hundred and forty-nine of the Law of Property Act, 1925,(*u*) the Lease took effect to vest a term of ninety years in the lessee at the date of the commencement of that Act determinable by notice after the death of the said A. B., on either side in accordance with the said sub-section.

(3) If the said A. B. dies before the date fixed for completion the Purchaser may by notice in writing determine this contract on the terms that the said deposit is forfeited to the Vendor.

(4) But if the said A. B. dies after the date fixed for completion then the whole of the purchase-money shall be payable notwithstanding that the lessor has determined or given notice to determine the Lease.

No. 49.

Mortgage term by sub-demise the sale being made by a purchaser who acquired title before 1926 from the mortgagees.

(1) The abstract shall commence with a mortgage deed dated —— 19—, whereby the property was sub-demised by way of mortgage for the residue, except the last —— days of the principal term granted by the lease mentioned in the particulars,(*v*) and the mortgage term created by the sub-demise was sold before 1926, under a power in or implied under the mortgage deed,(*w*) which did not contain any provision that after a sale the mortgagor was to stand possessed of the principal term in trust for a purchaser.

(*u*) This sub-section does not apply to a term terminable on life taking effect in equity under a settlement or created out of an equitable interest under a settlement for mortgage, indemnity or other like purposes. This form applies to registered land until the register has been altered under L. R. Act, 1925, s. 2, and Rules 210 and 211.

Leases for lives.

(*v*) The particulars must state the term sold as being the residue less the specified days of the term granted by the original lease. This form applies where the title to the head term is registered and the mortgage is noted as an incumbrance prior to registration, but the vendor is not registered as proprietor of the incumbrance. As the head term is not to be assigned no reference to the registration will be necessary.

(*w*) If the mortgage deed contains the clause here referred to, the head term will have become vested in the vendor under L. P. Act, 1925, 1st Sch., Pt. II. That part of the schedule does not vest in a mortgagee any head term held in trust for him (para. 7 (*a*)); but it does vest it in a purchaser entitled to call for it. If the vendor holds or can convey the head term then he must do so; L. P. Act, 1925, s. 42 (4). But that section does not affect the right of a mortgagee of leasehold land to sell his mortgage term only if he is unable to convey or vest the leasehold reversion: sub-s. 5. If the mortgagee sells after 1926, and is able to convey the head term, then he can and must, unless

Vesting of head term.

Mortgagee's powers to convey.

(2) The Purchaser shall have an assignment of the mortgage term only, and shall not require the Vendor to procure any assignment of the principal term, nor require him to show in whom that term is now vested.

(3) Any assignment of, or order for vesting in the Purchaser, the principal term, and all information and evidence requisite in order to procure the same, shall be searched for and obtained by and at the expense of the Purchaser.

No. 50.

Mortgage term by sub-demise the sale being made by a Purchaser who acquired title before 1926 from the mortgagees (several lots).

(1) The abstract of title to each Lot shall commence with the Lease (*x*) under which the same is held, all the Leases being dated in the year 18—.

(2) In consequence of mortgages having been made by sub-demise and of foreclosures and sales by the mortgagees made before 1926, the mortgage terms created by sub-demise are alone vested in the Vendor, and will be assigned to the Purchasers.

(3) If any Purchaser requires an assignment of the principal terms granted by the respective Leases, such assignment shall be procured and the title thereto shall be traced by him and at his own expense, and no objection or requisition shall be made on account of such principal term being outstanding, nor shall the Vendor be required to give any information with reference thereto.

No. 51.

Sale of head term by a mortgagee by sub-demise.

(1) The abstract shall commence with the Lease mentioned in the particulars followed by the mortgage deed dated —— 19— under which the Vendor sells.

(2) By that deed the premises were demised for the residue except the last —— days of the principal term granted by the Lease mentioned in the particulars, but under the statutory power the Vendor (*y*) is selling and will convey the principal term.

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expressly excepted with the leave of the court, convey the head term (*ib.*, s. 89); but that section does not apply if the mortgage term does not include the whole of the land comprised in the leasehold reversion unless the rent has been apportioned or there is no rent: sub-s. 6. Under Lord Cranworth's Act the principal term might also have been conveyed, but the Conv. Act, 1881, only authorised a sale of the mortgage term. In cases where s. 89 does not apply, the mortgagee should be given an irrevocable power of attorney to convey the head term.

(*x*) The particulars must state the term sold as being the residue less the specified days of the term granted by the original lease. Where the title to the head term is registered, see note to No. 49, *supra*.

(*y*) Formerly a covenant to assign enabled the purchaser to get an order for the owner of the legal term to convey it; if he refused the court appointed

No. 52.

Sale of term by a chargee by way of legal mortgage.

(1) The abstract shall commence with the Lease mentioned in the particulars followed by the charge by way of legal mortgage dated —— 19—, under which the Vendor sells.

(2) By that deed the whole of the property comprised in the Lease mentioned in the particulars was charged and accordingly the Vendor will under the statutory power sell and convey the term granted by that Lease [*or* By that deed part of the property comprised in the Lease mentioned in the particulars, being the property described in the particulars, was charged and as the rent affecting that part has been legally apportioned the Vendor will under the statutory power sell and convey the term granted by that Lease so far as it relates to that part at the apportioned rent].

No. 53.

Sale of mortgage term by sub-demise the rent not having been legally apportioned. (*z*)

(1) The abstract shall commence with the Lease (an attested copy whereof only will be produced) mentioned in the particulars followed (after divers mesne assignments) by the mortgage deed dated —— 19—, under which the Vendor sells.

(2) By that deed the premises, being part of the property comprised in the Lease mentioned in the particulars, were demised for the residue, except the last —— days of the principal term granted by the said Lease. And the said mortgage did not contain any power of attorney or other provision for getting in the head term.

(3) As the rent attributable to the premises has not been legally apportioned the Vendor will only sell and convey the mortgage term at the rent (equitably apportioned) mentioned in the particulars so far as the same may be payable.

(4) The Purchaser shall not require the Vendor to show the person in whom the principal term is vested, nor require the Vendor to get in the same or furnish any information or evidence in reference thereto not in his possession.

No. 53A.

Sale of registered land with Absolute or Good Leasehold title.

THE land is registered with an Absolute [*or* Good Leasehold] title under the Land Registration Act, 1925, and the Vendor

a person to execute the conveyance: Jud. Act, 1884, s. 14: *Savage* v. *Norton* [1908], 1 Ch. 290, 297; 77 L. J. Ch. 198; and see Dart, 7th ed., 607. Unless there was a declaration of trust, it was doubted whether a vesting order could be obtained: *Re Propert* (1853), 22 L. J. Ch. 948. All these difficulties are removed by L. P. Act, 1925, s. 89, which authorises the head term to be conveyed, except in the cases referred to in the last note but one.

Power to convey head term.

(*z*) This form will apply (with the addition of Form No. 177, *inf.*) where the principal term is registered and the mortgage is noted as an incumbrance prior to registration, *but* the mortgagee is *not* registered as proprietor of the incumbrance.

will furnish the Purchaser with a written authority to inspect the register [and *if so*, a copy of the entries in the register and copies or abstracts of any plans or documents referred to thereon].*

No. 53B. The like with possessory title; no title before registration to be shown.

THE land was on the —— day of —— registered with a possessory title on the occasion of a purchase from A. B., which was completed by a Conveyance dated the —— of —— and made between the said A. B. of the one part and C. D., of, &c., [*or if so*, the present Vendor] of the other part. The title will commence with that Conveyance. The remainder of the abstract will consist of a copy of the register and copies or abstracts of any plans or documents referred to thereon.*

No. 53C. The like, prior title to be shown.

THE land was on the —— of —— registered with a possessory title. The title will commence with (*state commencement of title as in Forms* 12 *and foll.*), and will be deduced down to the date of the registration; the remainder of the abstract will consist [*as in No.* 53 *B.*]*

No. 53D. Sale of registered land with qualified title.

THE land is registered with a qualified title, the qualification being as follows. [*Insert qualification.*] The Purchaser shall not require any evidence in regard to the matters mentioned in the qualification as being excepted from the effect of registration.

SECTION III.

NOTE.—The forms in this section only apply to registered lands to the extent stated in the headnote to s. IX, *inf.*

No. 54. Notice of rights of tenants.

As to Matters arising on the Abstract.(*a*)

THE provisions of clause 22 of the General Conditions

* In the absence of stipulation, the expense of these is, on purchases at under £1,000, to be borne by the purchaser; L. R. Act, 1925, s. 110.

Outstanding legal estates. "Bare trustee." Old law.

(*a*) Save to the extent appearing in the above conditions, a stipulation that an outstanding legal estate is to be traced or got in by a purchaser is void: L. P. Act, 1925, s. 42 (3). A bare trustee was defined in the 6th ed. of Dart as "a trustee to whose office no duties were originally attached, or who, though such duties were originally attached to his office, would on the requisition of his *cestuis que trust* be compellable in equity to convey the estate to them or by their direction and has been requested by them so to convey it." In the opinion of Hall, V.-C., the words "has been requested by them so to convey it" are not a necessary ingredient to a person being a bare trustee (*Christie* v. *Ovington* (1875), 1 Ch. D. 279) and this view was supported by Stirling, J., in the case of *Re Cunningham and Frayling* [1891], 2 Ch. 567; 60 L. J. Ch. 591; where he disagreed with the opinion expressed by Jessel, M.R., in *Morgan* v. *Swansea Urban Sanitary Authority* (1878), 9 Ch. D. 582—viz., that a trustee who has a beneficial interest is not a bare trustee. In a sale by the court a married woman, who was a trustee, although she was beneficially

of 1925 shall apply to the tenancies referred to in the particulars.(*b*)

No. 55.

Contents of tenants' Leases on sale by auction.

THE provisions of clause 22 of the General Conditions of 1925 shall apply to the Leases and tenancies referred to in the particulars.(*c*)

No. 56.

Contents of tenants' Leases on sale by private treaty.

THE Leases and tenancy agreements (when in writing) referred to in clause 22 of the General Conditions of 1925 have been inspected by the Purchaser, and that clause shall apply accordingly.

No. 57.

Leases by mortgagor alone.

No objection shall be made on the ground that any Lease or agreement for tenancy not authorised under any statutory or express power was made or entered into by a mortgagor [*or* that a mortgagor accepted the surrender of any lease] without the concurrence of his mortgagees.(*d*)

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interested in the proceeds of sale, was a bare trustee within the meaning of s. 6 of the V. & P. Act, 1874 (now repealed): *Re Docwra* (1885), 29 Ch. D. 693; 54 L. J. Ch. 1121. The husband of a married woman who is seised in her right is not a bare trustee within the Fines and Recoveries Act, 1833: *Keer* v. *Brown* (1859), Johns. 138; 28 L. J. Ch. 477. A married woman, who is a trustee and mortgagee, on payment of the mortgage debt, was a bare trustee within the meaning of s. 16 of the T. Act, 1893 (now repealed): *Re Howgate and Osborn* [1902], 1 Ch. 451; 71 L. J. Ch. 279; *cf. Re Harkness and Allsopp* [1896], 2 Ch. 358; 65 L. J. Ch. 726. See now the L. P. Act, 1925, s. 170, which enables a married woman trustee to dispose of trust property without her husband. It was formerly unnecessary to trace the legal estate further than to show that it could be got in, and a good title was made by showing a good equitable title and power to get in the legal estate under the Trustee Acts or otherwise: *Camberwell Building Society* v. *Holloway* (1879), 13 Ch. D. 754; 49 L. J. Ch. 361. Now the vendor must get in the legal estate at his own expense and cannot contract out of this liability: L. P. Act, 1925, s. 42 (3) (8). As outstanding legal estates are got in and placed in the persons entitled thereto on the 1st January, 1926, by L. P. Act, 1925, 1st Sch., care must in future be taken not to lose sight of the legal estate which is made the basis of conveyancing.

Married woman trustee.

Legal estates.

(*b*) This condition should be used where the sale is expressed to be made "subject to the tenancies" and the tenancies are not specified: *Caballero* v. *Henty* (1874), L. R. 9 Ch. 447; 43 L. J. Ch. 635; and see Dart, 7th ed., 884, 885; *Clements* v. *Conroy* [1911], 2 Ir. R. 500. The purchaser must be given an opportunity to inspect any important leases. The conveyance should only be made subject to tenancies or leases "so far as subsisting," otherwise the conveyance may operate to waive a forfeiture notwithstanding: L. P. Act, 1925, s. 141 (3), see also s. 65 (2).

Tenancies.

(*c*) This condition fixes the purchaser with notice of claims for unexhausted improvements under the Agric. H. Act, 1923, and of notices to quit which are invalid under the Agric. H. Act, 1923, s. 26: *Re L. Derby* [1912], 1 Ch. 479; 81 L. J. Ch. 567.

Agricultural improvements.

(*d*) This condition is not required where the lease takes effect under L. P. Act, 1925, s. 99, or has been brought within that section by agreement. As to how a lease by mortgagor and mortgagee now takes effect having regard

Leases by mortgagor alone.

No. 58.

Presumption as to regularity of proceedings where purchase made under an Inclosure Act.

WHERE any part of the property appears from the abstract to have been purchased from the Commissioners under an Inclosure Act, the Purchaser shall assume that the provisions of the Act relating to the sale by the Commissioners, the payment of the purchase-money, and the discharge of such part of the property from tithe rentcharge have been duly complied with.(*e*)

No. 59.

Allotments and exchanges under Inclosure Acts.

ALL exchanges and allotments made more than — years before the day of sale under any Inclosure Act or award shall, unless the contrary appears, be deemed duly made in respect of the title under which the lands taken in exchange or on allotment appear by the abstract or otherwise to have been since held, and no requisition or objection shall be made in respect of any such exchange or allotment, or in respect of the title to the land given in exchange, or in respect whereof the allotment was made [*or* in respect of the award].(*f*)

No. 60.

Exchanges for adjusting boundaries.

WHERE exchanges of small pieces of land have been made for adjusting boundaries, the Vendor shall not be required to show title to or identify any land so taken or given in exchange.(*g*) [But the Vendor will, if so required, furnish a statutory declaration to show in regard to any exchange effected after the 31st December, 1925, that the legal estate in the land taken under the exchange has been acquired under the Limitation Acts.]

Surrender to mortgagor.

to the section, see *John Bros.* v. *Holmes* [1900], 1 Ch. 188; 69 L. J. Ch. 149. There is no implied power for the mortgagor to accept a surrender of a lease granted under the section: *Robbins* v. *Whyte* [1906], 1 K. B. 125; 75 L. J. K. B. 38. But under L. P. Act, 1925, s. 100, a mortgagor or mortgagee in possession may accept a surrender of a lease, subject to certain restrictions, with a view to granting a new lease under s. 99.

(*e*) See Dart, 7th ed., 181, as to the necessity for this condition; it will seldom be required.

Title to land under inclosure award.

(*f*) Upon the sale of lands allotted under an inclosure award, the abstract down to the award must be that of the title to the lands in respect of which the allotment was made: Dart, 7th ed., 181, 322, *et seq.*; and see *Re Alms Corn Charity* [1901], 2 Ch. 750; 71 L. J. Ch. 76.

Adjustments of boundaries without any conveyances.

(*g*) Frequently a boundary is adjusted between adjoining owners without any deed of exchange or cross conveyances being executed. It seems that if each party enters in the lifetime of the other and the land is in the same county, the exchange will be valid: Litt. s. 62; Dart, 7th ed., 1036, 1037. Any legal estate outstanding on the 1st January, 1926, would be got by L. P. Act, 1925, 1st Sch., Pt. II. *Semble*, after the 31st December, 1925, this could only be got in under the Limitation Acts (*ib.*, s. 12), unless this is held to be a conveyance taking effect "by operation of law" (*ib.*, s. 52 (2) (*g*)), and not within s. 1 (7), for s. 7 (2) (*c*) does not apply. A title to the legal estate must be shown: *ib.*, s. 42 (3). If the land is registered this condition is not available: L. R. Act, 1925, s. 110 (5).

No. 61.

As to land acquired under agreement for exchange without a conveyance.

ABOUT an acre of land, part of Lot ——, was acquired by the Vendor under an agreement for exchange, made in the year —— with A. B., and has been in the possession of the Vendor since that time, but no conveyance has been made to him for completing such exchange. The said A. B. died intestate in the year ——, leaving an infant heir, ——. As the Vendor appears to have acquired a title to the land under the Limitation Acts before 1926, he shall not be required to procure a conveyance of the said land, or to furnish any title thereto, or to the land given by him in exchange for the same, other than the aforesaid agreement.(*h*)

No. 62.

Encroachments.

(1) A small strip of the property was acquired by encroachment in the year 18— by A. B., who was then a lessee of the remaining property.

(2) The said A. B. twelve years and upwards and before 1926, acquired the freehold reversion of the property comprised in his Lease, but the conveyance did not include the said strip of land.

(3) The Purchaser shall assume that the said A. B. intended the encroachment for his own benefit, and shall not require any evidence of the title of the Vendor thereto except the production of the conveyance to him by the said A. B. of the said strip.(*i*)

No. 63.

Recitals evidence.

EVERY recital or statement contained in any deed or other instrument dated —— years or upwards before the day of sale, shall be accepted as conclusive evidence of the matter or fact recited or stated.(*j*)

(*h*) If the legal estate is outstanding or if the land is registered this condition is not available.

Encroachments by a tenant.

(*i*) Inclosures or encroachments made by a tenant will generally, as between him and his landlord, be the property of the latter, unless it can be proved that the tenant at the time intended the encroachment for his own benefit, and not to hold it as he held the estate of which he was tenant: *Doe* v. *Jones* (1847), 15 M. & W. 580; 16 L. J. Ex. 38; *Andrews* v. *Hailes* (1853), 2 El. & Bl. 349; 22 L. J. Q. B. 409; *Doe* v. *Tidbury* (1854), 14 C. B. 304; 23 L. J. C. P. 57; *Lord Hastings* v. *Saddler* [1898], 79 L. T. 355; *East Stonehouse U. D. C.* v. *Willoughby* [1902], 2 K. B. 318, 336; 71 L. J. K. B. 873; see Dart, 7th ed., 182, 183. This condition is not available if the legal estate has not been acquired under the Limitation Acts or under L. P. Act, 1925, 1st Sch., Pt. II; see *ib.*, s. 42.

Condition as to recitals.

Depreciatory on sale by trustees.

(*j*) This condition is only required where the recital is contained in an instrument dated within twenty years: see L. P. Act, 1925, s. 45 (6). On a sale by trustees a condition unnecessarily restrictive as to recitals was depreciatory (*Dunn* v. *Flood* (1884), 25 Ch. D. 629; affd. 28 *ib.*, 586; 53 L. J. Ch. 537; 54 *ib.*, 370); but see now as to depreciatory conditions T. Act, 1925, s. 13.

Mortgagee selling under statutory power of sale.

No condition is now required as to the statutory power of sale of a mortgagee: L. P. Act, 1925, s. 104 (2), which meets the decision in *Life Interest, &c.* v. *Hand in Hand &c.* [1898], 2 Ch. 230; 67 L. J. Ch. 548. The three months'

No. 64. Building and Friendly Society mortgages.

THE provisions of clause 17 of the General Conditions of 1925 respecting the discharge of a mortgage formerly belonging to a Building or Friendly Society shall apply in regard to any such discharge.(*k*)

No. 65. As to satisfaction of mortgage.

THE Purchaser shall not be entitled to any other evidence of the satisfaction of a Mortgage dated the —— day of —— than the fact that the mortgage deed is now in the possession of the Vendor, and a statutory declaration by him to the effect that the mortgage deed has been in his possession during the last —— years, and that no claim has ever been made upon him for principal or interest under the Mortgage.(*l*)

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default in payment mentioned in L. P. Act, 1925, s. 103, is from the service of the notice, not from the date fixed by the notice for payment: *Barker* v. *Illingworth* [1908], 2 Ch. 20; 77 L. J. Ch. 581. The duties of a mortgagee who sells are defined in *Kennedy* v. *De Trafford* [1897], A. C., at p. 185; 66 L. J. Ch. 413.

Friendly and Building Society receipts.

(*k*) This condition with the words referring to a secretary applies to Friendly Societies: see the Friendly Societies Act, 1875, s. 16 (7), now repealed and re-enacted by the Friendly Societies Act, 1896, ss. 53 (1), 107; see also the Act of 1908. Without the reference to a secretary, it applies to Building Societies, but only to those established under 6 & 7 Will. 4, c. 32 (see s. 5), whose mortgages were made to trustees. If the society has been established under the Building Societies Act, 1874 (see Act of 1894, s. 29), it is a corporation (see Act of 1874, s. 9), and the mortgage is made to the corporation. If a society established under the previous Act has obtained a certificate of incorporation under the Act of 1874 (see s. 7), then (see s. 27) the securities and property become transferred from the trustees to the corporation. In either of these cases the receipt (see s. 42) will be under the seal of the corporation and proves itself, and the person countersigning would be assumed to be the proper officer as described: see L. P. Act, 1925, s. 74, so that no special condition would be necessary. Section 115 of the L. P. Act, 1925, does not operate to impose any stamp duty on such receipts, see sub-ss. 5, 9. As to the effect of the indorsed receipt under the old law, see *Hosking* v. *Smith* (1888), 13 A. C. 582; 58 L. J. Ch. 367, and cases there cited: *Harvey* v. *Municipal, &c., Society* (1884), 26 Ch. D. 273; 53 L. J. Ch. 1126; *Crosbie-Hill* v. *Sayer* [1908], 1 Ch. 866; 77 L. J. Ch. 466. Now the effect of the receipt is prescribed by L. P. Act, 1925, s. 115; for the form of receipt, see 3rd Sch. to that Act.

Rights of mortgagor and mortgagee under Limitation Acts.

(*l*) Under the R. P. Lim. Acts, a mortgagee may take proceedings to recover land within twelve years after the last payment of principal or interest: *Kibble* v. *Fairthorne* [1895], 1 Ch. 219; 64 L. J. Ch. 184; but after the period has expired the mortgagee is absolutely barred: *Re Hazeldine* [1908], 1 Ch. 34; 77 L. J. Ch. 97; even when there is a prior mortgage on foot; and see *Re Fox* [1913], 2 Ch. 75; 82 L. J. Ch. 393. Where a mortgage is paid off and no reconveyance is executed, the mortgagor being a tenant at will does not acquire the legal estate till the expiration of thirteen years: *Sands to Thompson* (1883), 22 Ch. D. 614; 52 L. J. Ch. 406. See also Dart, 7th ed., 456, *et seq.* As to the law before the Act of 1833, see Carson, 2nd ed., 186-187. Now a mortgagee will only have a term or a charge by way of legal mortgage putting him in the same position as if he had a term. This term will cease when the claim to the mortgage debt is barred.

No. 66.
As to deed, &c., executed by attorney.

A DEED [*or* customary assurance] dated the —— day of —— was executed by the attorney of a predecessor in title of the Vendor. The Purchaser shall assume that the principal was then living and not under disability (*m*) and shall not make any objection if the power of attorney or an office copy thereof cannot be produced.

No. 67.
Deed executed under a power.

A DEED dated in the year —— is expressed to be made in exercise of a power. The Purchaser shall assume that the formalities prescribed by the instrument which conferred the power were duly complied with and shall not require the production of such instrument or take any objection in respect thereof.(*n*)

No. 68.
No proof of assent before 1926 to devise or bequest of freeholds or leaseholds.

THE property was specifically devised [bequeathed] to the Vendor by the Will of a testator who died in the year ——. The Purchaser shall assume that the assent of the personal representatives was given to the devise [bequest], and shall require no evidence thereof (*o*) [but the Purchaser shall be entitled at his

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Satisfied terms.

No special condition as to satisfied terms will any longer be required. Without prejudice to the rights of limited owners paying off mortgages out of their own money, when the money secured by a mortgage is paid off the term ceases: L. P. Act, 1925, s. 116. See also *ib.*, s. 5, and 1st Sch., Pt. II, s. 1, which apply to terms derived out of leasehold as well as out of freehold interests, thus reversing *Re Moore and Hulm* [1912], 2 Ch. 105; 81 L. J. Ch. 503. Until the beneficial interests become united, the term, not being a mortgage term, does not become satisfied: Dart, 7th ed., 534, 535. No useful purpose beneficial to the owner of the term must remain unsatisfied: *Anderson* v. *Pignet* (1872), L. R. 8 Ch., at p. 189; 42 L. J. Ch. 310; thus it would remain on foot if the costs of the trustees of the term had not been satisfied.

Powers of attorney.

(*m*) The first part of this condition is not required where an irrevocable power is given under the L. P. Act, 1925, ss. 126 or 127, which apply to powers of attorney created by instruments executed after 1882. A power of attorney created after 1925 and relating to land must be filed unless the power is handed over on completion, a purchaser is entitled to have the power or an office copy of the material parts handed over; the vendor cannot contract out of this liability: *ib.*, s. 125. Powers of attorney can be given to the persons deriving title under a purchaser for value, but when affecting registered land they must be protected by a caution or other entry on the register: *ib.*, s. 128.

Execution and attestation of deeds under powers.

(*n*) This condition is not required if the deed creating the power is dated before the time fixed for the commencement of the title (L. P. Act, 1925, s. 45 (1)), save that a purchaser is, apart from stipulation, entitled to require the production or an abstract or copy of a power of attorney under which any abstracted document is executed: *ib.* See also as to execution and attestation under powers: *ib.*, ss. 73-75, 159.

Assent of executor to bequest or devise.

(*o*) Leaseholds always vested in the executor on the death of the lessee and passed to the legatee as soon as he assented to the bequest, which assent, when made before 1926, need not be in writing: *Re Culverhouse* [1896], 2 Ch. 251; 65 L. J. Ch. 484; *Austin* v. *Beddoe* [1893], 41 W. R. 619. Until the assent is given the executor's powers remain: *Graham* v. *Drummond* [1896], 1 Ch. 968; 65 L. J. Ch. 472. The same remarks applied to freeholds under

own expense, if he so requires, to a statutory declaration that the Vendor has been in possession or in receipt of the rents and profits since the death of the said testator].

No. 69.

No evidence of death of devisee in lifetime of testator who died before 1898.

THE property was specifically devised to A. B. by the Will of a testator who died in the year ——. The said A. B. disappeared in the year ——, and has not been heard of since that time. The Purchaser shall assume that the said A. B. died [a bachelor and intestate] in the lifetime of the testator, and that the property passed under the gift of the testator's residuary estate, and shall be satisfied as to the above-mentioned facts on the production of a statutory declaration stating the date of such disappearance and the steps which were taken to discover the said A. B.(*p*)

No. 70.

Tenant for life in right of dower.(*q*)

THE property having been assigned by metes and bounds to the Vendor for her life in satisfaction of her right to dower she is selling as tenant for life thereof within the meaning of

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Part I of the Land Transfer Act, 1897, in the case of deaths occurring after 1897, and before 1926. A legal estate in copyholds did not pass to the executor, but an equity did: *Re Somerville and Turner* [1903], 2 Ch. 583; 72 L. J. Ch. 727. Where the legatee or devisee sells and the assent was given before 1926, but not in writing, or has been lost, the above condition should be used.

Assent in writing required to pass a legal estate.

An assent made after 1925, whether or not the testator or intestate died before 1926, in order to pass a legal estate to a person entitled, whether by devise, bequest, devolution, appropriation or otherwise, must be in writing signed by the personal representatives, and must name the person in whose favour the assent is given: Ad. of E. Act, 1925, s. 36. Unless the contrary intention appears it will relate back to the death and covenants for title may be implied therein: *ib.*

An assent part of the curtain scheme.

(*p*) See *Re Aldersey* [1905], 2 Ch. 181; 74 L. J. Ch. 548; *Re Jackson* [1907], 2 Ch. 354; 76 L. J. Ch. 354; *Re Long* [1915], 60 Sol. J. 59. If the testator dies after 1897 the assent by the executor will show who the residuary devisee was. If the testator dies after 1925 then the assent in writing will, in favour of a purchaser, be sufficient evidence as to the person entitled to take the legal estate, unless notice of a previous assent or conveyance has been endorsed: Ad. of E. Act, 1925, s. 36. If the personal representative is making title there should also be statement in writing by him that he has not made a previous assent or conveyance of the legal estate in the property in question: *ib.*, sub-s. 6. The will does not come on the title but only the probate and the assent, hence such a special condition would not be required nor would it be admissible for it would affect the title to the legal estate.

Dower.

(*q*) See S. L. Act, 1925, ss. 1 (3), 19 (1), 30 (3), under which the personal representatives of the intestate will be the S. L. Act trustees and the proper persons to execute the vesting instrument: 2nd Sch., s. 1. If the dower is not assigned then it is only an interest comprised in the settlement and coming to the dowress under the settlement: *ib.*, s. 1 (3). Dower or freebench is rarely if ever assigned, hence the heir, if of full age, would make title under s. 21, for the dower is an equitable interest, or if the heir was an infant title would be made by the personal representatives or trustees of the settlement under s. 26.

the Settled Land Act, 1925, and as the usual counsel's certificate as to title was given when the vesting instrument was made in her favour by the personal representatives of her late husband nominating themselves as Settled Land Act trustees a Purchaser shall not be entitled to investigate the equitable interests for giving effect to which the said vesting instrument was executed.

No. 71.

Declaration as to pedigree given to former Vendor to be accepted.

THE statutory declaration with which the Vendor on the occasion of his purchase was furnished in proof of the pedigree of ——, of the identity of the property, and of various other

Save when the right attaches before 1926 and cannot (if that is possible) be barred by a testamentary or other disposition by the husband, dower and freebench are abolished where the husband dies after 1925: Ad. of E. Act, 1925, s. 45. That Act repeals the Dower Act, 1833, as respects deaths after 1925.

Abolition of dower and freebench.

No special condition, requiring a purchaser to assume that no wife or widow of a former owner is entitled to dower or freebench unless it appears that he was married, seems to be necessary, for under the general law it would only apply on the intestacy of a person capable of being married before 1834.

Law before 1834.

Under the old law of dower, a widow was entitled to dower out of all corporeal hereditaments, and also out of all incorporeal hereditaments which savour of the realty, as, for instance, advowsons appendant or in gross, tithes, rents, franchises, commons appendant, &c., of which her husband was solely seised for any legal estate of inheritance in possession at any time during the coverture, and which the issue, if any, of the wife might by possibility inherit, but not out of equitable estates.

Law after 1833 and before 1926.

The Dower Act, 1833 (now repealed), s. 2, provided with respect to every woman married after 1833, that when the husband died beneficially entitled to any land for an interest which would not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, was an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint tenancy), then his widow should be entitled in equity to dower out of the same land. It is conceived that if under the Inheritance Act, 1833, the land did not pass to the heir-at-law of the husband, he having taken by descent, still his widow would have been entitled to dower.

The Dower Act also provided that the widow might be deprived by her husband of her right to dower, not only by a declaration in a deed that she shall not be entitled to dower (see *Re Gibbon* [1909], 1 Ch. 367; 78 L. J. Ch. 264), but by an absolute disposition of the property in his lifetime, or by his Will, or by a declaration in the conveyance to the husband, or by any deed executed by him, or by a declaration in his Will, that she should not be entitled to dower: ss. 4, 6, 7. Partial estates and charges created by any disposition or Will of a husband, and all debts, incumbrances, contracts, and engagements to which his land was subject, were valid as against the wife's right to dower: s. 5. If the husband devised any land to his widow, out of which she would be dowable if the same had not been so devised, or any estate or interest therein, her right to dower was thereby destroyed in respect of any land of her husband, unless the Will provided to the contrary: s. 9. But the Act did not prevent the court from enforcing any covenant or agreement entered into by the husband not to bar the right of his widow to dower out of his lands, or any of them: s. 11.

circumstances connected with the title, shall be accepted by the Purchaser as conclusive evidence of the facts therein stated and declared. A copy of the declaration can be inspected by the Purchaser at the office of the Vendor's solicitor at any time during office hours for a period of fourteen days next preceding the sale and in the sale-room at the time of sale, and the Purchaser whether he inspects or not, shall be deemed to have notice of all the contents thereof.(*r*)

No. 72.

Evidence as to satisfaction of a particular legacy.

As to Lot ——, no claim having been made against the Vendor in respect of a legacy of £——, charged thereon by the Will of a former owner, who died more than —— years ago, and which became payable on his death, but for which no receipt or release can be produced, the Purchaser shall assume that all claims in respect of the legacy have been discharged.(*s*)

Gavelkind copyholds.

The Dower Act extended to lands of gavelkind tenure (which tenure is now abolished: Ad. of E. Act, 1925, s. 45): *Farley* v. *Bonham* (1861), 2 John. & H. 177; 30 L. J. Ch. 239); but not to copyholds: *Powdrell* v. *Jones* (1854), 2 Sm. & G. 407; 24 L. J. Ch. 123. If a copyholder dies intestate before 1926, proof will be required that he did not leave a wife entitled to freebench, but if he devised the property by will, ordinary freebench is barred by s. 3 of the Wills Act, 1837; *Lacey* v. *Hill* (1875), L. R. 19 Eq. 346; 44 L. J. Ch. 215; *Re Thomas* (1886), 34 Ch. D. 166; 56 L. J. Ch. 9. It has however been claimed (it is conceived without sufficient foundation) that in certain manors these authorities do not apply. The Limitation Acts do not apply to an action for assignment of dower: *Williams* v. *Thomas* [1909], 1 Ch. 713; 78 L. J. Ch. 473.

Barring of freebench.

Intestates Estate Act, 1890 (repealed).

Where the intestate dies before 1926 and the net value of his estate exceeds £500 the widow, if there are no issue, will be entitled to £500 as well as dower and any share she may take in the personal estate: Intestates Estate Act, 1890, s. 4. This Act is repealed by the L. P. Act, 1922; and the repeal is repeated in the Ad. of E. Act, 1925, 2nd Sch., Pt. I, but the repeal does not apply where the death occurred before 1926. The dower came after the £500 and was subject to it: *Re Charriere* [1896], 1 Ch. 912; 65 L. J. Ch. 460. The Act did not apply to cases of partial intestacy. *Re Twigg* [1892], 1 Ch. 579; 61 L. J. Ch. 444. A widow's right under the Act might have been barred by a settlement: Dart, 7th ed., 542; *Re Hogan* [1901], 1 Ir. R. 168. For further decisions on the Act, see *In b. Bryant* [1896], P. 159; 65 L. J. P. 96; *Re Heath* [1907], 2 Ch. 270; 76 L. J. Ch. 450; *Re Cuffe* [1908], 2 Ch. 500; 77 L. J. Ch. 776.

Matters of pedigree behind the screen.

(*r*) Matters of pedigree arising after 1926 will not, as a general rule, in any way affect the title to a legal estate, for a curtain will be placed in front of them consisting of either a simple assent in writing under Ad. of E. Act, 1925, s. 36, or a vesting instrument under the S. L. Act, 1925.

Legacies and annuities charged on land.

(*s*) Where a testator dies after 1925 legacies and annuities given by his will take effect as equitable interests when charged on land. Generally it will be expedient to pay or provide for them before the executor's assent to the passing of the legal estate, unless the land is subjected to a trust for sale. If there is no trust for sale the charge, whenever created, of legacies or annuities, whether or not a term is limited, creates a settlement (S. L. Act, 1925, s. 1 (v)), and after an assent title can only be made under that Act. A legacy should not

No. 73.

Evidence as to satisfaction of legacies generally.

THE Vendor shall not be required to produce the receipt for, or any other evidence of, the satisfaction of any pecuniary legacy bequeathed by the Will of a testator who died in the year ——, the payment of which is not thereby postponed, and the Purchaser shall assume that every such legacy has been satisfied.(*t*)

No. 74.

Evidence of payment of legacies or portions.

AS regards legacies and portions charged by the Will of any person who died more than twelve years before the day of sale, a statutory declaration will, if required by any Purchaser, be furnished at his expense, to the effect that no interest has been paid thereon and no claim made in respect thereof for twelve years and upwards last past, and upon the evidence afforded by such declaration it shall be assumed that the legacies and portions have been paid(*u*).

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be charged directly on real estate. If any capital sums are to be raised out of land, either a term should be limited to trustees on trust to raise them or the land should be devised on trust for sale and the legacy made payable out of the proceeds. An annuity charged on land should be limited as a rentcharge, unless there is a trust for sale. In the latter case an annuity fund can be set aside out of the proceeds of sale: Ad. of E. Act, 1925, s. 41; T. Act, 1925, s. 22 (3). A personal representative may limit or demise land for a term on trusts for raising or securing a capital sum and the interest and may limit or grant a rentcharge for giving effect to an annual or periodical sum (Ad. of E. Act, 1925, s. 40); in this way, if the machinery of a will is defective it can be rectified. The power is also available in the case of an intestacy. Where this power is exercised this will create a settlement (see *supra*), and the personal representative must execute a vesting assent naming S. L. Act trustees, to enable the devisee or legatee to make a title under S. L. Act, 1925, s. 20 (1) (ix). A purchaser will insist (L. P. Act, 1925, s. 42) on title being made under S. L. Act, 1925, as otherwise he will not obtain the legal estate: *ib.*, ss. 13, 18.

Charge creates a "settlement"

(*t*) The period of limitation in the case of a legacy charged on land is twelve years (R. P. Lim. Act, 1874, s. 8); only six years' arrears of interest can be claimed.

Legacies charged on land.

(*u*) Though more than twelve years may have elapsed since legacies and sums charged on the land became payable, a purchaser is entitled to require receipts or a release from the person entitled to those charges, as the claims on their account may still be subsisting by reason of infancy, or other disability, or of some intermediate acknowledgment: *Shields* v. *Rice* (1839), 3 Jur. 950; *Cooke* v. *Soltau* (1824), 2 Sim. & St. 154; 2 L. J. (O. S.) Ch. 30; and see the R. P. Lim. Act, 1874, s. 8; and generally, as to the presumption of the satisfaction of charges: Dart, 7th ed., 459, *et seq.* A condition that "no evidence shall be required of the payment of any sum of money charged on the property which became payable twelve years or upwards prior to the day of sale" precluded a purchaser from requiring a conditional surrender of copyholds by way of mortgage, where the mortgagee had not been admitted, to be vacated: *Hopkinson* v. *Chamberlain* [1908], 1 Ch. 853; 77 L. J. Ch. 567

Evidence of discharge.

Special conditions as to legacies will become unnecessary.

Legacies charged after 1925 will only create equitable interests. A purchaser can rely on the assent in writing of the executor and will not investigate the equities under the will. Only where a pending action, order, or

No. 75. Alteration in deed.

In a Conveyance dated the —— day of ——, the words " and his heirs " appear to have been added after the deed was engrossed. The Purchaser shall assume that the said words were added before the deed was executed, and shall not take any objection in respect of such alteration.(*v*)

No. 76. Where land has been purchased by Vendors who are trustees without power to invest in land.

The property was purchased by the Vendors in the year —— at the request of the tenant for life of the proceeds of sale of personal property directed to be sold by the Will of the late A. B., which did not contain any power to purchase land, and accordingly the property by operation of law became impressed with an implied trust for sale. The said tenant for life died on the —— day of ——. The Vendor is now selling under the implied trust for sale; and having regard to sections twenty-three and twenty-seven of the Law of Property Act, 1925, no beneficiary shall be required to join in the conveyance.(*w*)

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a land charge is registered by the legatee will a purchaser be concerned therewith. A conveyance on sale by the executors would override a charge for legacies. The executors must, however, take care, where a settlement is created by the charge, to execute a vesting assent wherein S. L. Act trustees are nominated.

Alterations in documents, effect of.

(*v*) A material alteration in a document avoids it, but an immaterial alteration does not: *Re Howgate and Osborn* [1902], 1 Ch. 451; 71 L. J. Ch. 279; *Bishop of Crediton* v. *Bishop of Exeter* [1905], 2 Ch. 455; 74 L. J. Ch. 697. The presumption, in the absence of evidence to the contrary, is that the alterations in a deed were made before execution: see Dart, 7th ed., 494; Norton, 26-42.

"Heirs."

Such a condition will not be required unless the conveyance is made before 1926, for by L. P. Act, 1925, s. 60, words of limitation are no longer required to pass the fee simple. Indeed, save where an heir takes an equitable interest by purchase under a will or settlement (L. P. Act, 1925, ss. 131-132), the expression "heir" will cease to have a technical meaning, and will not be used in practice. Under an intestacy after 1925 the land no longer devolves on the heir: Ad. of E. Act, 1925, ss. 45-46; there is however a temporary saving in the case of a lunatic or defective living and of full age on 1st January, 1926, who dies intestate after 1925, for his beneficial interest in real estate will devolve under the general law (independently of special custom) in force before 1926: *ib.*, s. 51 (2).

Rights of persons entitled to proceeds of sales.

(*w*) Had the money arisen from the sale of land the purchase could have been properly made under L. P. Act, 1925, s. 28, after 1925, for that section applies whether the trust was created before or after 1st January, 1926. Where the net proceeds have become absolutely vested in persons of full age in undivided shares, whether or not the shares are subject to a derivative trust, the trustees may, with the consent of the persons of full age (not being annuitants) interested in possession in the net rents and profits until sale, partition the land. A consent may be given on behalf of a lunatic or defective by his committee or receiver. The trustees for sale act on behalf of an infant: L. P. Act, 1925, s. 28 (3), (4). Where the beneficiaries being absolutely entitled are of full age, and there are no incumbrances affecting undivided shares, they may, subject to legal effect being given to incumbrances affecting the entirety, require the land to be vested in any of them, not exceeding four,

Partitions or conveyance.

No. 77.

Power of attorney to surrender.

THE Purchaser shall assume that every surrender or admittance effected before 1926 pursuant to a power of attorney was authorised by the power under which it appears on the court rolls to have been made, and production of the power shall not be required.(*x*)

No. 78.

Where there is a covenant not to assign without licence.

THE provisions of sub-section 7 of Clause 15 of the General Conditions of 1925 shall apply in regard to licences to assign.(*y*)

No. 79.

Covenants in Lease at a nominal rent.

THE Lease being at a nominal rent, the mere fact of possession under it at the time of completion of the purchase shall be

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on trust for sale: *ib.*, s. 3 (1) (*b*) (ii); they cannot require the land to be conveyed to them in undivided shares: *ib.*; see also s. 34. Under s. 23 of the L. P. Act, 1925, the trust for sale, whether express or implied, remains on foot in favour of a purchaser until the land is conveyed to or by the direction of a beneficiary. A purchaser of a legal estate is not concerned with the trusts affecting the proceeds of sale: *ib.*, s. 27. The trust for sale (the trustee not being a trust corporation) must be carried out by not less than two trustees: *ib.*, s. 27 (2). The trustees for sale now have the statutory powers of a tenant for life (*ib.*, s. 28), hence will be able to purchase land which will be held on trust for sale. Where land is purchased in breach of trust it is best to convey it on trust for sale, the money settlement will not affect the title; and see Dart, 7th ed., 629, 630. Proceeds of sale of land held on trust for sale can be laid out in the purchase of other land, but the land so acquired must be conveyed on trust for sale: L. P. Act, 1925, s. 28 (1).

Duration of trust for sale.

Number of trustees.

Power to purchase land.

(*x*) As to the necessity for this condition, *cf. Re Airey* [1897], 1 Ch. 164; 66 L. J. Ch. 152. It will be unnecessary if the General Conditions of 1925 are made applicable. See the Copyhold Act, 1894, s. 48, as to the appointment by the lord or tenant of an agent by power of attorney. If a power of attorney to deal with land is created after 1925 it must be filed and a purchaser (save in the case of registered land) has an indefeasible right to an office copy of the material parts of the power: L. P. Act, 1925, s. 125.

Rights of purchaser as respects powers of attorney.

(*y*) Where a licence to assign is required on a sale by a mortgagee, the licence is not to be unreasonably refused (L. P. Act, 1925, s. 89 (1)); an order for foreclosure, or a deed declaring that the head term is vested in a mortgagee who has acquired a title under the Limitation Acts, does not give rise to a forfeiture for want of a licence to assign: *ib.*, sub-ss. 2 and 3. Before the landlord can re-enter for the breach of a covenant not to assign without licence he must give notice under L. P. Act, 1925, s. 146. The vendor is not bound to take legal proceedings for the purpose of obtaining the landlord's consent: *Lehmann* v. *McArthur* (1868), L. R. 3 Ch. 496; 37 L. J. Ch. 625. Apart from any condition the vendor is bound to do his best to obtain the licence, and is liable in damages if he does not do so: *Day* v. *Singleton* [1899], 2 Ch. 320; 68 L. J. Ch. 593; *cf. Bain* v. *Fothergill* (1874), L. R. 7 H. L. 158; 43 L. J. Ex. 243; *Braybrooks* v. *Whaley* [1919], 1 K. B. 435; 88 L. J. K. B. 577; and see *Pease* v. *Courtney* [1904], 2 Ch. 503; 73 L. J. Ch. 760; but he need not obtain it until the title is accepted and a conveyance tendered: *Ellis* v. *Rogers* (1885), 29 Ch. D. 661, 672. As to when the purchaser is entitled to act as though the vendor had failed to perform such a condition, see *Smith* v. *Butler* [1900], 1 Q. B. 694; 69 L. J. Q. B. 521. As to whether the title can be forced on a purchaser if the lessor withhold consent "unreasonably," see *Re Marshall and Salt* [1900], 2 Ch. 202; 69 L. J. Ch. 542.

Licence to assign.

accepted as sufficient evidence of due performance of the lessee's covenants up to that time.(*z*)

No. 80. Contents of Lease or Underlease, which is sold.

THE provisions of sub-section 2 of clause 15 of the General Conditions of 1925 shall apply to any Lease or Underlease under which any property is held.

No. 81. Provision for Underleases described as Leases.

IF any Lot described as held by Lease should [otherwise than in the abstract] appear to be held by Underlease the Purchaser thereof shall not make any objection on this account nor claim any compensation on account of misdescription.(*a*)

No. 82. As to covenants where leaseholds subject to underleases.

NO objection shall be made on account of the covenants by the tenant in any Underlease not corresponding with the covenants by the lessee in the Lease under which the property is held.(*b*)

No. 83. Unstamped documents.

NO objection shall be made on account of any document executed before the 17th May, 1888, being unstamped or not sufficiently stamped, and any such document which the [a] Purchaser requires to be stamped or further stamped shall be procured to be so stamped by him and at his expense (*c*) [but the Vendor is not aware of any such document].

Lease at a nominal rent.

(*z*) This is covered by General Conditions of 1925, Cl. 15 (6). As to the necessity for this condition, see L. P. Act, 1925, s. 45 (2) (3); *Re Moody and Yates* (1885), 28 Ch. D. 661; aff. 30 *ib.* 344; 54 L. J. Ch. 584, 886. In the case of a mortgage term created out of the fee simple there would be no lessee's covenants; in the case of a sub-term created for mortgage purposes the mortgagee, if in possession, would be able to produce the receipt for rent.

Purchaser of Lease not bound to take Underlease.

(*a*) This goes rather further than General Conditions of 1925, Cl. 15 (4). A purchaser is not bound to take a title by underlease instead of lease: *Madeley* v. *Booth* (1848), 2 De G. & S. 718; *Re Beyfus and Masters* (1888), 39 Ch. D. 110; *Re Lloyds Bank and Lillington* [1912], 1 Ch. 601; 81 L. J. Ch. 386. Unless the particulars and conditions are sufficient to give him notice of the underlease: *Camberwell Building Society* v. *Holloway* (1879), 13 Ch. D. 754; 49 L. J. Ch. 361. An underlease may generally be known by its being for a term less a few days. This condition was formerly depreciatory on a sale by trustees unless it was not known what lots were held by underlease: *Re Rayner* (1885), 53 L. T. 495; but see now as to depreciatory conditions, T. Act, 1925, s. 13.

(*b*) If the covenants in an underlease are not as wide as those in the head lease it may give rise to a forfeiture, and the lessee might not have a remedy over against the underlessee. This goes further than General Conditions of 1925, Cl. 22 (4).

Vendor's obligation to stamp documents.

(*c*) This condition is useless as regards any instrument executed after the passing of the Customs and Inland Revenue Act, 1888: Stamp Act, 1891, s. 117; Highmore, 4th ed., 304. The vendor's obligation to stamp extends to agreements with tenants: *Coleman* v. *C.* [1898], 79 L. T. 66; and see Dart, 7th ed., 186. Where this condition is used the contract should be stamped before, or at the time of execution, with an adhesive 6*d.* stamp. It is not inserted in the General Conditions of 1925, for it only applies to titles going back for more than 36 years.

THE provisions of clause 16 of the General Conditions of 1925, relating to registration in a local deeds register, shall apply. No. 84. Unregistered documents. (*d*)

SECTION IV.

NOTE.—All the forms in this section, except those otherwise noted, will apply (with small verbal adjustments in some cases) to sales of registered land. Most of the forms relate to overriding interests: L. R. Act, 1925, s. 70.

As to Identity and Matters arising on the Particulars.

No. 85. Identity and discrepancies in measurements.(*a*)

THE provisions of clause 18 of the General Conditions of 1925 shall apply [except that a Purchaser shall not be entitled to require a statutory declaration as to identity].(*b*)

No. 86. As to exceptions in documents.

WHERE in any document there is a general exception of any property which has been previously sold, the Purchaser shall assume that such excepted property did not include any part of the property comprised in the particulars.(*c*)

No. 87. Tithes merged.

(1) The rectorial tithe rentcharges affecting the property were [with the concurrence of the Ministry of Agriculture and Fisheries] merged in the year ——.

If a conveyance has been once stamped, a subsequent purchaser is not concerned to see that it has been stamped on adequate consideration within the meaning of the Fin. (1909-10) Act, 1910, s. 74 (5); *Re Weir and Pitt* [1911], 55 Sol. J. 536. Inadequacy of consideration, effect on subsequent purchaser.

(*d*) Only instruments operating to transfer or create a legal estate or charge by way of legal mortgage will be registered after 1925: L. P. Act, 1925, s. 11. See also s. 197 and L. C. Act, 1925, s. 10 (6). A legal mortgage, a memorial of which is registered, is not treated as a "puisne mortgage" within Class C. of that section. As to "puisne mortgages" see L. P. Act, 1925, s. 97 (3), 1st Sch., Pt. VII, para. 6, Pt. VIII, para. 5. Registration in Middlesex and Yorkshire.

(*a*) See Dart, 7th ed., 170, *et seq.*; *Curling* v. *Austin* (1862), 2 Dr. & Sm. 129; this condition will be used in almost every case.

(*b*) The words in square brackets will only be inserted when it is impossible to obtain the required statutory declaration. Without this condition the vendor must, it would seem, distinguish the various parts of the property: *Monro* v. *Taylor* (1848), 8 Hare, 81; 3 Mac. & G. 713; 21 L. J. Ch. 525; and see Dart, 7th ed., 171. There will be no copyhold or customary land after 1925, but until the manorial incidents are extinguished assurances of the legal estate must be produced to the steward for endorsement and the customary fines and fees must be paid. Obligation to distinguish titles.

(*c*) These general exceptions in deeds are undesirable, but on some occasions it may be difficult to avoid using them. Usually they may be rendered unnecessary by employing a general description, *e.g.*, "the land now subject to the limitations of the settlement," or "now subject to redemption under the mortgage," or the excepted property may be scheduled. General exceptions.

(2) The abstract of title thereto shall commence with a conveyance on sale dated the —— day of —— , and the Purchaser shall not require the production of the original nor any abstract or copy of the grant from the Crown of the tithes, nor any information as to the date of such grant, or otherwise with reference thereto.(*d*)

No. 88. Evidence of land being tithe free.

THE Purchaser shall require no other evidence that the several Lots are free from tithe rentcharge (*e*) besides a statement to that effect in the —— Inclosure Award, [*or* besides a statutory declaration by the Vendor or his agent (to be made at the Purchaser's expense) that no tithe rentcharge or *modus* or other payments in lieu of tithe have been paid in respect of the said Lots for twelve years or upwards before the day of sale].

No. 89. Crown grant of tithes.

THE Purchaser shall not require production of the original, nor any abstract or copy, nor any other evidence of or information with respect to the grant from the Crown of the tithes.

No. 90. Repair of chancel.

THE Vendor shall not be required to furnish any evidence that the rectorial tithes are not liable for the repair of the chancel of the Parish Church of ——, and the Purchaser shall take subject to such liability (if any) as exists as respects such repair.

No. 91. Evidence of redemption of land tax.

THE redemption of the land tax will be shown by production of the certificate of the contract dated in the year —— , and no objection shall be made because the acreage therein appearing does not correspond with that stated in the particulars(*f*).

No. 92. As to land tax and tithe rentcharge generally.(*g*) Merger of tithe rentcharge. Ownership of land and unmerged tithe.

THE provisions of clause 20 of the General Conditions of 1925 shall apply [except that a Purchaser shall not be entitled to

(*d*) As to tithe rentcharge and merger generally, see Dart, 7th ed., 395, *et seq.* As to the apportionment of charges payable for redemption of tithe rentcharge, see L. P. Act, 1925, s. 192.

(*e*) Where a vendor is owner of lands, and of the tithes issuing out of them, but the tithes have not been merged, the particulars ought not to state that the lands are tithe free, but should provide for the conveyance of the tithes. If they are not conveyed, it seems that the vendor would be entitled to claim them from the purchaser.

A property may be tithe free in virtue of a prescriptive composition, commonly called a *modus decimandi*, or by reason of a composition made under an Inclosure Act, or by merger or redemption under the Tithe Acts, 1836 to 1918. Tithe rentcharge of more than twenty shillings may be compulsorily redeemed at the option of the owner of the land charged, without the consent of the owner of the rentcharge: Tithe Act, 1918, s. 3.

(*f*) See Dart, 7th ed., 393, *et seq.*

Legal estates

(*g*) In the absence of any condition or statement in the particulars the purchaser will take subject to land tax and tithe rentcharge, land tax and tithe rentcharge are treated as legal estates: L. P. Act, 1925, s. 1 (2). For the purposes of registered land they are "overriding interests": L. R. Act, 1925, s. 70.

a statutory declaration respecting the payment of land tax or tithe rentcharge.](*h*)

No. 93.

Right of way over one lot for benefit of another.(*i*)

(1) Lot —— is sold subject to the rights of way to be given to the Purchaser of Lot —— as mentioned in the particulars or to be reserved to the Vendor if the last-mentioned Lot be not sold.

(2) Effect shall be given to this condition by conveying the land with a reservation in accordance with section sixty-five of the Law of Property Act, 1925, in favour of the Purchaser of Lot —— or the Vendor (as the case may require) of the said rights for an estate in fee simple.

(3) The Purchaser shall give to the Purchaser of Lot —— or to the Vendor (as the case may require) a separate acknowledgment of his right to production of the conveyance and an undertaking for the safe custody thereof.

No. 94.

Easements, restrictive covenants, fences, &c.

THE property is [the several Lots are] sold and shall be conveyed (*j*) subject to [the restrictive covenants contained in a conveyance dated the —— day of ——, a copy of which can be inspected at the office of the Vendor's solicitors for fourteen days next before the date of the sale during office hours or in the sale-room at the time of sale and to] all quit, chief and other rents, rights of way, light and other easements (if any), affecting the same, and to any subsisting liability to repair party walls,(*k*)

Apportionment of tithe rentcharge.

(*h*) This last paragraph should be inserted only when it is impossible to obtain the required declaration. Even apart from any condition, a purchaser cannot require the vendor to procure an apportionment of tithe rentcharge affecting the land sold and also other land not belonging to the vendor: *Re Ebsworth and Tidy* (1889), 42 Ch. D. 23; 58 L. J. Ch. 665; Dart, 7th ed., 396. Land tax should be redeemed before an estate is developed for building purposes; it is also more convenient to redeem the tithe rentcharge.

(*i*) As to reservations generally, see General Conditions of 1925, cl. 30.

A vendor's liability under covenants for title.

(*j*) A vendor, who has expressly or impliedly covenanted for title without any restriction on his obligation, is liable for damages in respect of a right of way, created by him or his predecessors, other than a former purchaser for value, which he inadvertently failed to disclose to his purchaser: *Turner* v. *Moon* [1901], 2 Ch. 825; 70 L. J. Ch. 822. A vendor is also liable for defects created by him or his predecessors, other than a former purchaser for value, of which his purchaser has notice or which in fact appear on the face of the conveyance, unless he has so worded his covenant as to exempt such defects from his obligation, or has inserted a clause clearly explaining and controlling his covenant: *Page* v. *Mid. Ry.* [1894], 1 Ch. 11; 63 L. J. Ch. 126; *G. W. Ry.* v. *Fisher* [1905], 1 Ch. 316; 74 L. J. Ch. 241; and see *May* v. *Platt* [1900], 1 Ch. at p. 621; 69 L. J. Ch. 357; see also L. P. Act, 1925, s. 76; Dart, 7th ed., 794. Hence the conveyance should either be made subject to all defects created by the vendor or his predecessors, other than a former purchaser for value, whether the purchaser has notice of them or not, or an express provision should be inserted in the conveyance limiting the vendor's liability under his covenants for title.

(*k*) See *Jones* v. *Pritchard* [1908], 1 Ch. 630; 77 L. J. Ch. 405; *Carlish* v.

fences, roads or streets [and the [each] Purchaser shall in his conveyance covenant to keep the Vendor and his estate and effects indemnified from all claims in respect of any breach of the covenants contained in the said conveyance or any of them, so far as they affect the property [the Lot purchased by him] (*l*)].

No. 95.

Restrictive covenants, Vendor having purchased without notice of some of them.(*m*)

(1) The respective Lots are sold and will be conveyed subject to the covenants and stipulations (if and so far as they are now capable of being enforced) entered into by A. B. when he purchased from C. D. and contained in a deed of covenant dated the —— day of —— (*i.e.*, *before* 1926), being a deed of even date with the conveyance to the said A. B. and also to the covenants and stipulations mentioned or referred to in a second deed of covenant of the same date, whereby the said A. B. covenanted to indemnify the said C. D. from any liability (in respect of previous restrictive covenants) to certain other Purchasers from him named in the schedule to such deed.

(2) The property so purchased by A. B. was subsequently conveyed [demised] by him by way of mortgage to mortgagees through whom the Vendor derives title, and who sold under their power of sale.

(3) A statutory declaration will be produced, made by the solicitor of such mortgagees, showing that the mortgagees had no notice of the last-mentioned Deed or of the restrictive covenants therein referred to.

Salt [1906], 1 Ch. 335 ; 75 L. J. Ch. 175 ; *Pwllbach Co.* v. *Woodman* [1915], A. C. 634 ; 84 L. J. K. B. 874.

When indemnity against restrictive covenants not required.

Restrictive covenants given after 1925, when void as against a purchaser.

(*l*) See *Re Poole and Clarke* [1904], 2 Ch. 173 ; 73 L. J. Ch. 612 ; Dart, 7th ed., 582, as to the form of indemnity. No indemnity is required if the covenants are so framed that an owner is discharged from liability when he parts with his interest. Nor where the vendor or his testator has not entered into the covenants or given an indemnity. A covenant or agreement (not being a covenant or agreement between lessor and lessee) restrictive of the user of land entered into after 1925 comes within the definition of a land charge, Class D., see L. C. Act, 1925, s. 10, hence unless it is registered at the Land Registry under that Act, or in a Yorkshire deeds register, as respects land within the jurisdiction of the local registry, or (of course) by way of notice on the register in the case of registered land, a purchaser of a legal estate for money or money's worth takes free therefrom, whether or not he has notice : *ib.*, s. 13 (2), and L. R. Act, 1925, ss. 20 and 23. See also L. P. Act, 1925, s. 2 (3) (5). For a power to modify or discharge restrictive covenants, see *ib.*, s. 84. Instead of this express condition, Clause 31 of the General Conditions of 1925 can be made applicable and the restrictive covenant will then merely be referred to in the contract or particulars ; while easements, &c., are covered by Clause 19 of those conditions, when made applicable.

(*m*) This form is not applicable to covenants made after 1925 in respect of which a land charge was registered. Forms 95 and 96 do not apply to registered land.

(4) The Vendor has been advised that there is in fact no subsisting liability affecting the Lots under the said Deed or the covenants therein referred to.

(5) Copies of the said two Deeds of —— and of the statutory declaration may be inspected at the offices of the Vendor's solicitors during office hours for fourteen days next preceding the sale, and Purchasers shall be deemed to have notice of the contents thereof, and shall not make any objection or requisition in respect of such liability (if any) as may appear by the said Deeds to affect the Lots now offered for sale, and shall be bound to assume that there is no liability affecting the said Lots arising in respect of any restrictive covenant entered into on any sale made by the said C. D. previous to the year ——.

No. 96.

Restrictive covenants void for want of registration of a land charge.

(1) No objection shall be made by reason of a conveyance dated —— (*i.e.*, after 1925) containing certain covenants restrictive of the user of the property [Lots ——] seeing that at the time when the property [those Lots] was [were] sold and conveyed in the year 19—, no land charge was registered for protecting those covenants.

(2) But the Vendor will, if the [a] Purchaser so requires, furnish him with a statutory declaration to prove that no land charge was registered in respect of the said covenants at the time aforesaid [*or* produce an official certificate of search to prove, &c.].

No. 97.

Origin of quit rents and redemption thereof.

(1) No information shall be asked for, nor shall any inquiry be made as to the origin or creation of any quit, fee farm, or chief rent, whether mentioned in the particulars or not.(*n*)

(2) The Vendor will at the expense of the [a] Purchaser if he so desires redeem any such liability before completion under section one hundred and ninety-one of the Law of Property Act, 1925, but no objection shall be made on the ground that completion is delayed on that account.

No. 98.

Manorial incidents and extinguishment thereof.

Apportionment and redemption of rent-charges.

(1) The property was formerly copyhold of the manor of —— and remains subject to the manorial incidents referred to in the particulars.

(*n*) The particulars should state that the rents are payable. L. P. Act, 1925, s. 191, applies to rents reserved on a sale and to compensation rent-charges created on the extinguishment of manorial incidents as well as to quit rents; apportionments can be made under that section. To some extent Pt. VI of the L. P. Act, 1922, overlaps, for it applies to all manorial incidents, including quit rents, whether or not the land is enfranchised by Pt. V of that Act, hence there are alternative methods for redemption or extinguishment. Apart from an order of the Minister manorial incidents will cease on 1st January, 1936.

(2) The Vendor will before completion at the expense of the Purchaser, if he so desires, either by a compensation agreement or by notice, extinguish the said incidents for a gross sum (to be provided by the Purchaser) under Part VI of the Law of Property Act, 1922, but no objection shall be made on the ground that completion is delayed to enable the said incidents to be extinguished.

No. 99.

Where property is sold subject to perpetual rentcharge.

(1) The property is sold subject to a perpetual yearly rentcharge of £5 created by a Conveyance dated ——, and to the restrictive and other covenants and conditions therein contained.

(2) A copy or abstract of the said Conveyance can be inspected at the office of the Vendor's solicitors during office hours for a period of fourteen days next preceding the day of sale or in the sale-room at the time of sale,(*o*) and the Purchaser shall be deemed to have notice of the contents of the said Conveyance whether he inspects the same or not.

(3) The receipt for the last payment of the rent-charge shall be accepted by the Purchaser as conclusive evidence of the performance and observance of the covenants and conditions up to the completion of the purchase.(*p*)

(4) The Purchaser shall in his Conveyance [*or* transfer] give the usual implied covenant to pay the said rentcharge and observe and perform the said covenants and conditions and to keep the Vendor indemnified.

No. 100.

Equitable apportionment of perpetual rentcharge issuing out of the property sold and other property of the Vendor.

(1) The whole of the property comprised in the particulars, together with other property of the Vendor not included in this sale, is subject to a perpetual rearly rentcharge of £——.

(2) Each of the Lots shall be held and conveyed subject to and charged with such proportion of the said rentcharge as is specified in the particulars in exoneration of the other property affected, and the provisions of section one hundred and ninety of the Law of Property Act, 1925, shall apply.

(3) In each Conveyance [*or* transfer] the covenants mentioned in Part VIII of the Second Schedule to the Law of Property Act, 1925, shall be implied and no legal apportionment shall be required.

(4) If any of the Lots be not sold, the Vendor shall for the purposes of this condition stand in the place of the Purchaser of the unsold Lot or Lots.

(*o*) An opportunity of inspecting the deed should be given before the day of sale: *Dougherty* v. *Oates* [1900], 45 Sol. J. 119.

(*p*) *Cf.* L. P. Act, 1925, s. 45 (2) in regard to leases, and as to the implied covenant, see *ib.*, s. 77, 2nd Sch., Pt. VII.

(5) The residue of the rentcharge shall remain exclusively charged on the property retained by the Vendor.

(6) Each Purchaser shall at the expense of the Vendor and the other Purchasers requiring separate acknowledgment and undertaking, give to them separate acknowledgments of their right to production of his conveyance and undertakings for the safe custody thereof.

(7) The receipt for the last payment of the said rentcharge due before the day of sale shall be accepted as conclusive evidence that all the covenants and conditions contained in the Deed creating the said rentcharge have been duly observed and performed up to the day of sale.(*q*)

No. 101.

Equitable apportionment of fee farm rent.

(1) The fee farm rent of £ —— mentioned in the particulars shall, as between the Vendor and Purchasers, be charged exclusively on Lot ——, and that Lot shall be conveyed [*or* transferred] charged exclusively therewith in exoneration of the other property affected, and section one hundred and ninety of the Law of Property Act, 1925, shall apply as if the other Lots were land retained.

(2) The Purchaser of that Lot shall give the implied covenant mentioned in paragraph (i) of Part VIII of the Second Schedule to the Law of Property Act, 1925, as if instead of the "apportioned rent" the "entire rent" was therein referred to.

(3) The covenant to be implied under paragraph (ii) of the same part of the said Schedule shall be varied so as to exclude references to the payment of the balance of the rentcharge.

(4) If Lot —— be not sold at this sale the Vendor shall convey [*or* transfer] the other Lots subject to but indemnified by Lot ——against the said rent and will give the same implied covenants in relation to that Lot as would, under this condition, have been given by a Purchaser thereof.(*r*)

No. 102.

On sale of dwelling-house, subject to proportion of perpetual rentcharge.

(1) The messuage now offered for sale is one of four messuages conveyed by a deed of grant dated, &c., in consideration of a

(*q*) See *Re Biggs Atkinson and Ryan* [1913], 1 I. R. 125. As to conveyances subject to rents; see General Conditions of 1925, cl. 27. Para. (6) of this form has no application to registered land.

(*r*) To effect a legal apportionment the concurrence of the owner of the rent would be requisite. In these conditions "fee farm rents" mean ancient rents strictly so called arising as incidents of tenure. In Lancashire and Bristol perpetual rentcharges reserved on recent grants for building purposes are incorrectly termed fee farm rents. Rents which are incidents of tenure will be extinguished under L. P. Act, 1922, Pt. VI (see s. 138, also s. 128 (2)) within ten years from 1st January, 1926 (see s. 138 (1) (*c*)) unless previously extinguished by agreement or notice.

"Fee farm rents," meaning and extinguishment of.

perpetual rent of £4 thereby reserved, and subject to the restrictive and other covenants and conditions therein contained. The said Deed may be inspected at the office of the Vendor's solicitors at any time within fourteen days before the sale during office hours, or in the sale room at the time of sale, and whether the Purchaser inspects the said Deed or not, he shall be deemed to have notice of all the contents thereof.

(2) The said messuage was subsequently conveyed to the Vendor, subject to a yearly sum of £1, part of the said rentcharge, in exoneration of the other property affected, and to the aforesaid covenants and conditions, so far as they affected the same, and mutual covenants for indemnity (express or implied) were entered into by each party in respect of the payment of the rent, and the observance of the covenants.

(3) The present sale is made on the footing of the above arrangement, and the Purchaser shall covenant to keep the Vendor indemnified from his liability under the said covenants.(*s*)

(4) The Vendor will at the expense of the Purchaser, if he so desires, take the necessary steps under section one hundred and ninety-one of the Law of Property Act, 1925, for the apportionment and redemption of the rent, but no objection shall be made on the ground that completion is delayed to enable the apportionment and redemption to be effected.

No. 103.

On sale under Private Street Works Act.

THE Vendors, who are selling under the provisions of the Private Street Works Act, 1892, will deliver to the Purchaser an abstract of the resolutions and proceedings of the Vendors in reference to

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Sales by trustees, &c., reserving a rent.

Sale by mortgagee reserving a rentcharge.

Indemnity rents.

Municipal corporations.

(*s*) Trustees for sale, tenants for life and personal representatives can sell in consideration of a rentcharge: L. P. Act, 1925, s. 28; S. L. Act, 1925, s. 39; Ad. of E. Act, 1925, s. 39. Formerly trustees and tenants for life could not do so, unless expressly authorised: Sugden on Powers, 8th ed., 864; Farwell on Powers, 3rd ed., 622. No such power is given to mortgagees. If an express power is given a term of 2,000 years in the rent should be reserved to the mortgagee and subject thereto the rent should be reserved to the mortgagor. But where the land was already subject to a rentcharge and part of the land was sold at an equitably apportioned rent, there was no objection to a rent being reserved to the trustees by way of indemnity and subject thereto to the land being conveyed to the purchaser in fee simple subject to a proper proportion of the rent: Copinger on Rents. 94. A rentcharge created by way of indemnity is not affected by the perpetuity rule: L. P. Act, 1925, s. 162 (1). As to powers of distress and as to the benefit of covenants and powers running with the land indemnified: *ib.*, s. 189.

The Municipal Corporations Act, 1882, authorises municipal corporations with the consent of the Ministry of Health (see Ministry of Health Act, 1919, s. 3) to sell in consideration of a perpetual rentcharge: *Scarborough Corpn.* v. *Cooper* [1910], 1 Ch. 68; 79 L. J. Ch. 38.

the private street works mentioned in the particulars, so as to show that the requirements of the Act have been duly complied with.(*t*)

No. 104.

THE provisions of clause 21 of the General Conditions of 1925 (relating to local land charges) shall apply.(*u*)

Local land charges.

No. 105.

(1) The Leases of Lots —— to —— inclusive and Lot ——, which, as stated in the particulars, have attached to them a right of user of a square or garden, do not contain any grant of such right, the Leases having been granted at a time when there was only a contract with the freeholder for a Lease of the square or garden.

Right of user of garden not contained in lease. (*v*)

(*t*) S. 13 of the Private Street Works Act, 1892, gives the local authority, in respect of charges created under the Act, the powers of a mortgagee under the L. P. Act, 1925, s. 101 (see s. 207 (*c*)), when the owner makes default in payment. The powers of disposition conferred by this Act are saved by L. P. Act, 1925, s. 7 (3). See also *West Ham Corpn.* v. *Sharp* [1907], 1 K. B. 445; 76 L. J. K. B. 307. The charge is paramount to any existing mortgages: cf. *Birmingham Corpn.* v. *Baker* (1881), 17 Ch. D. 782.

Sale under Private Street Works Act.

(*u*) Subject to the provisions of the L. C. Act, 1925, expenses incurred by a local authority become a charge upon the property on the completion of the works and before the final apportionment: *Stock* v. *Meakin* [1900], 1 Ch. 683; 69 L. J. Ch. 401; *Surtees* v. *Woodhouse* [1903], 1 K. B. 396; 72 L. J. K. B. 302; *Lumby* v. *Faupel* [1904], 90 L. T. 140; *Re Allen and Driscoll* [1904], 2 Ch. 226; 73 L. J. Ch. 614; *Millard* v. *Balby, &c., Council* [1905], 1 K. B. 60; 74 L. J. K. B. 45; *East Ham U. D. C.* v. *Aylett* [1905], 2 K. B. 22; 74 L. J. K. B. 471; but the charge is not effective until the council have approved of the assessment. If the assessment is made after the date of the contract a purchaser is not entitled to a conveyance free from the charge, even though it is stipulated in the contract that the conveyance shall be free from incumbrances: *Re Farrer and Gilbert* [1914], 1 Ch. 125; 83 L. J. Ch. 177. Omission to mention in the particulars the fact that the vendor has been served with notices by the local authority would, it seems, entitle the purchaser to compensation, if he can show that the value of the property is thereby affected. *Re Leyland and Taylor* [1900], 2 Ch. 625; 69 L. J. Ch. 764; and in some cases to rescind the contract: see *Carlish* v. *Salt* [1906], 1 Ch. 335; 75 L. J. Ch. 175.

Charges in favour of local authority.

The local authority must, if the charge is created or arises before 1926, register it within one year from 1st January, 1926, or if it is created or arises after 1925, register it at once with their officer under L. C. Act, 1925, s. 15, otherwise a purchaser will take free therefrom under s. 13 (2). A local land charge comes within Class B.: s. 15 (2). If the charge created before 1926 is dealt with after 1925, then the transferee must register it within one year after the transfer, otherwise a purchaser will take free therefrom: s. 14 (2). Where a local authority expends money which, when the work is completed, will confer a charge, then a general land charge can be registered: s. 15 (4). When the specific charges are ascertained and admitted they will be registered within one year after the date of the registration of the general charge and as of the date of the latter. An official certificate of search for local land charges should be obtained notwithstanding that the title to the land is registered: s. 15 (8).

Local land charges.

Official certificate.

(*v*) Easements may be held in common: L. P. Act, 1925, s. 187 (2).

Easements in common.

(2) The required Lease of the square or garden from the freeholder to the Vendor will be granted, and if granted before completion will be produced to each Purchaser.

(3) The assignment [*or* transfer] to each Purchaser may contain, where necessary, an express demise by the Vendor of such right of user in common with the Vendor and the other Purchasers for the residue of the term affecting the lot assigned, less a nominal reversion, but the Vendor shall not be required to show any title beyond the Lease of the square or garden when granted, and shall not be required to produce the contract to grant the same or any other title thereto.

(4) No objection or requisition shall be made by any Purchaser on account of there being no grant of any such right in the Lease of the Lot purchased by him or otherwise in reference to the title of such right except to have the Lease of the square or garden (when granted) produced. Nor shall any completion be delayed by reason of such Lease not having been granted.

(5) A copy, signed by the Vendor's solicitors, of the form in which the right of user is to be granted and of the covenants to be entered into by each Purchaser securing payment to the Vendor of the square or garden rate and charging it on the Lot assigned [*or* transferred], and of the provisions to be made with respect to the exercise of the right, may be seen at the office of the Vendor's solicitors during office hours for fourteen days next preceding the day of sale, or in the sale room at the time of sale, and each grant shall be made in such form as nearly as the circumstances permit.

Section V.

Note.—All the forms in this section will apply (with small verbal adjustments in some cases) to sales of registered land.

As to the Conveyance and its Contents.

No. 106. Part of the purchase-money to remain on mortgage.

(1) The [Each] Purchaser shall have the option, exercisable by notice in writing to be given to the solicitors of the Vendor[s] within fourteen days from the day of sale, of leaving on mortgage of the property [Lot or Lots purchased by him] a part (the amount to be specified in the notice) not exceeding two-thirds of the purchase-money [including the valuation money for timber], the rate of interest to be £— per cent. per annum.

(2) The charge by way of legal mortgage [*or in the case of registered land* "The Registered Charge"] is to be prepared

by the solicitors of the Vendor[s], and to be in such form, and to contain such covenants and provisions [including a provision for the continuance of the loan for a period of seven years, provided interest is punctually paid in the meantime], as may be reasonably required by the solicitors of the Vendor[s], and to be executed by the Purchaser immediately after the execution of the conveyance [instrument of transfer] to him.

(3) All the costs and charges of the solicitors of the Vendor[s] of and incidental to the preparation [execution] and completion [by registration] of the charge shall be paid by the Purchaser at the time of completion [execution].(*a*)

No. 107.

Balance of purchase-money payable by instalments.

If the [any] Purchaser shall within fourteen days from the day of sale give to the solicitors of the Vendor[s] notice in writing of his desire to pay the balance of his purchase-money by [half] yearly instalments, and shall on or before the day fixed for completion sign an agreement in the form,(*b*) which can be obtained from the solicitors of the Vendor[s], or inspected in the sale-room at the time of sale, providing for payment of such balance by —— equal instalments with interest at the rate of £— per cent. per annum on the amount unpaid, then the signing of such agreement on or before the day fixed for completion shall, for the purpose of giving possession, be equivalent to payment on the day fixed for completion of the whole balance of the purchase-money, but the title deeds [*or* land certificate *or* title deeds and land certificate] will be retained by the Vendor[s], and the conveyance [*or* transfer] shall not be executed until all the instalments and interest have been paid.(*c*)

Loans by trustees.

(*a*) Trustees, including a tenant for life or statutory owner, on a sale of the fee simple or of a term having at least 500 years to run, may contract that not more than two-thirds of the purchase-money shall be left on the security of a charge by way of legal mortgage. If there are buildings there must be a covenant to insure. The loan may be for seven years provided interest is paid within thirty days of the due date and the mortgagor's covenants are observed. No valuation will be required: T. Act, 1925, s. 10 (1), (2). It is not expedient to negative the leasing powers given to a mortgagor in possession. A person entitled to be registered as proprietor can execute a charge before he is registered as first proprietor, or before his title is registered: L. R. Act, 1925, s. 37 (3) and R. 72.

(*b*) See Prec. IV, Agreements for Sale, p. 402, *inf.*

Payment of purchase-money by instalments.

(*c*) Failure to pay the last instalment will not necessarily amount to repudiation of the contract: *Cornwall* v. *Henson* [1900], 2 Ch. 298; 69 L. J. Ch. 581. A condition of forfeiture of past instalments upon the purchaser's default in paying any instalment is a penalty from which the court will relieve the purchaser: *Kilmer* v. *B. C. Orchard Lands* [1913], A. C. 319; 82 L. J. P. C. 77; *Steedman* v. *Drinkle* [1916], 1 A. C. 275; 85 L. J. P. C. 79. Unless there is a distinct refusal by one party to be bound by a contract in the future, it must

No. 108.

Power for Purchaser to pay part of purchase-money by instalments to be secured by mortgage.

(1) The Purchaser shall have the option of paying the balance of the purchase-money by six equal half-yearly instalments of £—— in manner following (that is to say): one instalment of £—— on the —— day of —— next, on which day the purchase shall be completed, and the remaining instalments with interest at the rate of £5 per cent. per annum on the balance of the purchase-money remaining unpaid by five equal half-yearly payments from the date fixed for completion.

(2) If default shall be made in the payment of the whole or part of any instalment for thirty days after the day appointed for payment thereof the whole of the purchase-money and interest shall immediately become payable.

(3) The Purchaser on completion shall execute a charge by way of legal mortgage of the property to the Vendor as security for the payment in manner aforesaid of the unpaid instalments and interest, and the charge shall be prepared [*if the land is registered, add* and registered] by the Vendor at the Purchaser's expense, and shall contain all such powers and provisions as the Vendor may reasonably require.(*d*)

No. 109.

Condition for investment of purchase-money as indemnity against defect in title (*e*).

(1) Inasmuch as the title to the property [*in the case of registered land add* prior to its registration with Possessory *or* Qualified title] is defective and incapable at present of being confirmed, the purchase-money shall be paid by the Vendor to two trustees (one to be nominated by the Vendor and the other by the Purchaser) to form an indemnity fund for the Purchaser and the persons deriving title under him against all claims adverse to the said title which may be made within —— years from the date of completion.

(2) The trustees shall invest the purchase-money in any investments from time to time authorised as investments for trust money, with power at their discretion to vary investments, and, subject to satisfying such indemnity as aforesaid,

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be ascertained whether the action of the party who was breaking the contract was such that the other party was entitled to conclude that the former no longer intended to be bound by its provisions: *Rhymney Ry. Co.* v. *Brecon and Merthyr Tydfil J. Ry. Co.* [1900], W. N. 169; 69 L. J. Ch. 813. Where the vendor is bringing an action for specific performance, he may obtain a declaration of lien for both the arrears and future instalments: *Nives* v. *N.* (1880), 15 Ch. D. 649; 49 L. J. Ch. 674; and see Dart, 7th ed., 739. In the case of registered land the form will only apply to a possessory or qualified title.

Lien.

(*d*) See note to last Form.

Stipulations rendered void.

(*e*) This condition would not be available if the defect consisted in the legal estate being outstanding: L. P. Act, 1925, s. 42 (3); for other stipulations which are made void, see same section, also *ib.*, s. 125 (3).

shall hold the indemnity fund and the income thereof upon trust to pay the annual income thereof during the said period to the Vendor and after the expiration of that period as to both capital and income In trust for the Vendor absolutely discharged from any claim of the Purchaser on account of any adverse claim or demand respecting the title to the property which may arise after the expiration of that period.

(3) If the defect in title shall at the expense of the Vendor be remedied to the reasonable satisfaction of the Purchaser or the persons deriving title under him [*or* be registered as absolute *or* good leasehold] before the expiration of the said period, then the indemnity fund and the income thereof shall forthwith be held In trust for the Vendor absolutely discharged as aforesaid.

(4) On the completion of the purchase, a declaration of trust shall be executed for giving effect to this condition, and the same shall be prepared by and at the expense of the Purchaser.

No. 110.

Condition for re-purchase by Vendor on failure to remedy defect in title.

INASMUCH as [*state the defect in title, not being a defect in regard to which a stipulation would be void under L. P. Act*, 1925, *s.* 42] a provision shall be inserted in the conveyance [*or* transfer] to the effect that—

(a) If the Purchaser or the persons deriving title under him shall at any time within the period of twenty-one years from the date of the conveyance [*or* transfer], give to the Vendor or his executors or administrators at least six months' notice of his or their desire to sell the property by reason of a claim having been made in respect of the said defect; and

(b) If before the expiration of such notice the said defect in title be not remedied [*or* the title be not registered as absolute *or* good leasehold];

the Vendor or his executors or administrators shall re-purchase the property at the said price of £——, and upon such re-purchase the property shall, so far as the claim permits, be delivered up in as good repair and condition as the same was in at the date of the conveyance.(*f*)

No. 111.

Where Vendor is tenant for life, statutory or limited owner.(*g*)

(1) The Vendor sells and will convey as a [statutory owner, *or* person having the powers of a] tenant for life under the Settled

(*f*) In documents made after 1925 "month" means calendar month: L. P. Act, 1925, s. 61. A right to re-purchase in a conveyance does not convert the transaction into a mortgage, if such does not appear to have been the intention of the parties: Dart, 7th ed., 834.

Effect of right to re-purchase.

(*g*) In the case of registered land omit all paragraph 1, and in paragraph 2 the words "not being an absolute owner subject only to equitable interests."

Covenants for title by a tenant for life

Land Act, 1925, the trustees for the purposes of that Act joining in the conveyance for the purpose only of acknowledging the receipt of the purchase-money.

(2) The Vendor, not being an absolute owner subject only to equitable interests, shall not be required to give any covenants for title except those implied by reason of his being expressed to convey as trustee.

No. 112.

Sale of settled land where a purchaser would, apart from condition, be bound to investigate the equitable interests.(*h*)

(1) When the first vesting instrument was executed for any of the purposes mentioned in the proviso to sub-section 2 of section one hundred and ten of the Settled Land Act, 1925, the title of the tenant for life [*or* person having the powers of a tenant for life] was investigated by counsel. A certificate by him will be produced to show :—

(a) That the land disposed of by the vesting instrument was comprised in the settlement subsisting on the 1st January, 1926 [*or* in the instrument which by that Act is deemed to be a settlement *or* in a settlement which by that Act is deemed to have been made by a person after the commencement of that Act *or* in an instrument inter vivos executed after the commencement of that Act and intended to create a settlement of a legal estate which did not comply with the requirements of that Act with respect to the method of effecting such a settlement].

(b) That the person in whom the settled land was by such vesting instrument vested or declared to be vested was the person in whom it ought to have been vested as tenant for life or statutory owner.

See General Conditions of 1925, cl. 25, which will generally be substituted for this and the next condition. It was formerly the practice to cut down the covenants implied by a tenant for life conveying as beneficial owner, so far as regards the reversion or remainder expectant on his life estate and to the title to and further assurance of the premises after his death, to the acts and defaults of himself and the persons deriving title under him. This will no longer be proper, the legal estate in the settled land will be vested in the tenant for life as trustee, and on his death, without having disposed of it, the estate passes to the special personal representatives. If he is an absolute owner subject only to equitable interests which will be overreached by his conveyance, he should convey "as beneficial owner" without qualification. In ordinary cases title will be made by a certified tenant for life, the money being paid to certified trustees and the purchaser will not investigate the trusts creating the life estate or other equitable interests: S. L. Act, 1925, s. 110. As to who are or have the powers of a tenant for life: *ib.*, ss. 19-29.

Registered land.

(*h*) Form 112 has no application to land registered with absolute or good leasehold title. As to land registered with possessory title prior to 1926, it probably has no application, but might be useful to preclude question, see, L. R. Act, 1925, ss 20, 23, and 87.

(c) That the persons stated in the vesting instrument to be the trustees of the settlement were the properly constituted trustees of the settlement.

(2) A Purchaser shall accept the said certificate (a copy of which shall be furnished to him) as conclusive and accordingly the [each] sale shall be effected in like manner as if the proviso to sub-section 2 aforesaid and the references thereto in the said section had not been enacted.

No. 113. Covenant by Vendor as mortgagee or trustee or representative

THE Vendors being [mortgagees *or* trustees *or* executors *or* administrators *or* the committee of a lunatic, *or* the receivers of a defective], shall be required to give only the statutory covenant implied by reason of their being expressed to convey as mortgagees [*or* trustees *or* personal representatives *or* the committee of a lunatic, *or* the receivers of a defective], and no other covenant for title shall be required.(*i*)

No. 114. Covenants for title by tenants in common of some of the shares in the proceeds of sale of land.(*i*)

THE Vendors being tenants in common of some of the proceeds of sale of the land, each of them will make himself liable under covenants for title implied by reason of his conveying his own undivided share of the said proceeds as beneficial owner, and not further.(*j*)

No. 115. Trustees for sale beneficially interested.

THE Vendors being beneficially entitled to the proceeds of sale of the property, though holding the land as trustees for sale, will convey the entirety as beneficial owners.(*k*)

No. 116. Proviso restricting the Vendor's implied covenants for title.

THE statutory covenant to be implied in the conveyance by the Vendor conveying as beneficial owner shall be so limited

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(*i*) Where the vendor was a trustee selling at the request of a tenant for life the latter formerly had to covenant for title, unless the contrary was clearly expressed in the contract: *Earl Poulett* v. *Hood* (1868), L. R. 5 Eq. 115; 37 L. J. Ch. 224; *Re Sawyer and Baring* (1884), W. N. 192: 53 L. J. Ch. 1104. But now a power of sale over settled land cannot be exercised by trustees (S. L. Act, 1925, s. 108); and where land is held on trust for sale a purchaser is not concerned with the trusts affecting the proceeds of sale: L. P. Act, 1925, s. 27.

(*j*) There can be no tenancy in common in land, for in all cases except party structures, where an undivided share might have subsisted before 1926 it is held on trust for sale and title thereto must be made by the trustees for sale; but there can be a tenancy in common affecting the proceeds of sale and each owner can sell his share. The owners of all the shares cannot make a title to the land till it is vested in them on trust for sale: L. P. Act, 1925, ss. 3 (1) (*b*), 42 (1) (*a*), (4) (ii). Tenants in common.

(*k*) See Dart, 7th ed., 573. Corporate bodies can hold property as joint tenants with individuals and as co-trustees: Bodies Corporate (Joint Tenancy) Act, 1899; and see *Re Thompson* [1905], 1 Ch. 229; 74 L. J. Ch. 133. For the cases in which land becomes vested in the beneficial owners on trust for sale, see L. P. Act, 1925, ss. 34, 36, 1st Sch., Pt. III, para. 2; Pt. IV, para. 1 (2); S. L. Act, 1925, s. 26 (4) (5). Joint tenancy.

as not to extend to the following matters, namely:—[*Here set out the liabilities to which the covenants are not to extend*].(*l*)

No. 117.

Legal mortgagees not to be required to release by separate instrument.

A SEPARATE discharge of any legal incumbrance shall not be required, nor shall any objection be made on the ground of expense or otherwise to any legal incumbrancer joining in the conveyance.(*m*)

No. 118.

Where the Purchaser buys subject to a mortgage, with power to discharge it before completion and deduct the debt.

(1) The property is subject to a legal Mortgage dated in the year 19—, under which the principal sum of £—— with interest at £— per cent. per annum is now secured.

(2) Notice to pay off the principal sum will, if the Purchaser so requires, be given immediately after the title has been accepted, and the Purchaser shall at the expiration of the notice pay the same and all interest due thereon and all costs, and shall at his own expense procure the Mortgagees to surrender the mortgage term or execute an indorsed receipt in the statutory form or to join in the conveyance to the Purchaser, as he may think fit.

(3) The Purchaser shall be allowed as a deduction out of his purchase-money the amount of the principal sum paid and all

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Sales with an indemnity when not allowed.

(*l*) There is no objection to a vendor selling subject to a legal mortgage or other legal estate, or to an equitable interest which cannot be overreached under a trust for sale or a settlement (L. P. Act, 1925, s. 2 (3); S. L. Act, 1925, s. 72); and transferred to the proceeds (*e.g.*, restrictive covenants); but where the equitable interest can be overreached, the purchaser will insist on its being overreached (L. P. Act, 1925, s. 42), for instance, by means of a trust for sale *ad hoc* (L. P. Act, 1925, s. 2 (2)); or a settlement *ad hoc* (S. L. Act, 1925, s. 21); he will not accept an indemnity when that would mean that he would not acquire the legal estate: S. L. Act, 1925, s. 13.

Expense of discharging incumbrances.

(*m*) If the property is subject to incumbrances at the date of the contract, they must either be discharged separately at the vendor's expense before the conveyance, or if they are surrendered in the conveyance the expenses of the purchase deed, so far as they are increased by the concurrence of the incumbrancer in the same deed, may be thrown on the vendor: Sug. V. & P., 14th ed., 448; *Reeves* v. *Gill* (1838), 1 Beav. 375. The purchaser could not throw such expense on the vendor when the mortgage debts were kept on foot for the purchaser's protection: Dart. 7th ed., 530, 723. Now mortgage terms will cease when the debt is paid off, they cannot be kept alive for the benefit of a purchaser: L. P. Act, 1925, s. 116. After 1925 the practice will be to discharge mortgages of land by indorsed receipts: *ib.*, s. 115. Only when the mortgage is not wholly paid off will the mortgagee join in a conveyance of part of the land affected by the mortgage. Equitable charges (*e.g.*, by deposit) should, in accordance with the old practice, be separately discharged before completion. As to equities protected by the registration of a pending action, annuity, writ, order, deed of arrangement or land charge, the purchaser can require the registration to be cancelled or that the person entitled to the equity should concur (*ib.*, s. 43); as a rule provision can be made for overreaching equitable charges.

interest accrued due thereon and costs incurred in relation to the discharge of the mortgage before the date fixed for completion.

(4) From that day the Purchaser shall pay all interest, but shall be allowed such interest by way of deduction from the interest (if any) on his purchase-money.

(5) The Vendor shall procure for verification of the abstract or any other requisite purpose production of all documents of title in the hands of a Mortgagee.(*n*)

(6) The documents shall not be delivered to the Purchaser until the mortgage is satisfied.

(7) The conveyance to the Purchaser, if made before the mortgage is paid off, shall be made subject to the mortgage and contain a covenant by him to indemnify the Vendor against all claims for principal money, interest, or costs due or to become due thereunder, and in that case the amount of the mortgage debt only shall be allowed as a deduction from the purchase-money.

No. 119.
Free form of conveyance.

(1) A form of conveyance [settled by counsel (*o*)] shall be furnished to the Purchaser [with the abstract], and, so far as circumstances permit, the parties shall follow such form.

(2) The conveyance to the Purchaser shall be prepared by him and at his own expense, and the draft thereof shall, without prejudice to any outstanding requisitions, be delivered at the office of the Vendor's solicitors at least fourteen days before the date fixed for completion, for perusal and approval on behalf of the Vendor and other necessary parties (if any). The engrossment of such conveyance for execution by the Vendor and other necessary parties (if any) shall be left, at the said office, within four days after the draft has been returned approved on behalf of the Vendor and other necessary conveying parties if any.(*p*)

No. 120.
Conveyance to be furnished to Purchaser at a fixed sum.

Purchaser entitled to employ his own solicitor,

ANY Purchaser, who is willing to accept the Vendor's title as shown by the abstract without making any requisition in

(*n*) See L. P. Act, 1925, s. 45 (4) (*a*) (*b*).

(*o*) If the purchaser is debarred from investigating title, special care must be taken that the conveyance is in the proper form and gives the purchaser his full rights, subject to the conditions of sale. Though a stipulation preventing a purchaser from employing his own solicitor is void, this does not prevent a vendor from reserving a right to furnish a form of conveyance to a purchaser from which the draft can be prepared or to charge a reasonable fee therefor: L. P. Act, 1925, s. 48 (1).

(*p*) The latter part of this condition is covered by General Conditions of 1925, cl. 24.

respect thereof,(*q*) may, on signifying his wish in writing to the Vendor's solicitors within —— days after the delivery of the abstract to him, have a deed of conveyance (in a form already settled, and which will be produced at the sale) executed and delivered to him free of cost, except stamp duty and a fee of £——.

No. 121.

Vendor to be entitled to duplicate conveyance.

THE Vendor shall be entitled to a duplicate of the conveyance, which shall be prepared and stamped at the expense of the Vendor, but shall be executed by the Purchaser free of expense to the Vendor. The Purchaser shall, at the request of and free of expense to the Vendor, produce the principal conveyance for the purpose of enabling the Vendor to have the duplicate properly stamped and denoted.(*r*)

No. 122.

Conveyance to be subject to existing restrictive covenants.

(1) The property is sold and will be conveyed subject to certain covenants restrictive of the user thereof or otherwise contained in a Conveyance dated the —— [and entered into by the Vendor when he purchased the property].

(2) A copy of these covenants may be seen during office hours within the period of seven days next preceding the day of sale at the office of the Vendor's solicitors, and will be produced at the sale.

(3) [The conveyance to the Purchaser shall contain covenants by him with the Vendor to observe and perform the said covenants, and to indemnify the Vendor against any breach of the same, and the Purchaser shall at his own expense, if required by the Vendor, execute and deliver to the Vendor a duplicate of such conveyance, and shall also at his own expense produce the principal conveyance for the purpose of having the duplicate stamped and denoted.(*s*)]

(*q*) If these words are omitted, a purchaser, by merely accepting a free conveyance, would not waive his right to investigate the title: *Re Pelly and Jacob* [1899], 80 L. T. 45. This condition does not infringe s. 45 of the L. P. Act, 1925.

Duplicate.

(*r*) This condition will be required, *e.g.*, where restrictive covenants are imposed or any rights are given or reserved to the vendor. As an alternative an obligation to give to the vendor a separate acknowledgment and undertaking for production and safe custody of the conveyance may be imposed on the purchaser. As to duplicates, &c., see General Conditions of 1925, cl. 33. In the case of registered land this sentence will require modification to meet the practice of the Land Registry and Inland Revenue department.

Restrictive covenants.

(*s*) As to sales subject to existing covenants, see General Conditions of 1925, cl. 31. A restrictive covenant affecting unregistered land entered into after 1925 must be registered as a land charge: L. C. Act, 1925, s. 10, Class D., and sub-s. 6; also s. 13 (2). As regards registered land all restrictive covenants must be entered on the register by way of notice: L. R. Act, 1925, s. 50. For power to discharge or modify restrictive covenants, see L. P. Act, 1925, s. 84.

No 123.

Lots to be made subject to conditions as to building, &c.

THE several Lots are to be made subject to [the conditions as to building and otherwise mentioned in the particulars *or*] the following conditions as to building and otherwise(*t*) (namely):

(1) Every Purchaser shall, within one month after the completion of his purchase, erect and for ever afterwards maintain a good and sufficient fence on that side of the Lot purchased by him which is marked "T" on the plan annexed to the particulars.

(2) No building or erection shall be set up on any Lot nearer to the road in front thereof than is indicated by the line marked on the plan "building line."

(3) No building of any kind other than private dwelling-houses or flats, with appropriate offices and out-buildings to be appurtenant thereto and occupied for the purposes thereof, shall be erected on any Lot, and no trade or business of any kind (except that of a doctor or surgeon) shall be carried on upon any part of any Lot.

(4) Not more than two houses shall be erected on any one Lot, and every house shall be either detached or semi-detached, and the cost, reckoned at the lowest current prices in labour and

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If the vendor has entered into any covenants he will require to be indemnified unless he is freed by the terms of the covenants when he parts with his interest. In other cases an indemnity is not required. This indemnity cannot be enforced unless and until the original covenantee takes steps to enforce the covenant or threatens to do so: *Reckitt* v. *Cody* [1920], 2 Ch. 452. Restrictive covenants entered into before 1926 must be disclosed: *Nottingham Brick Co.* v. *Butler* (1886), 16 Q. B. D. 778; 55 L. J. Q. B. 280; *Re Ebsworth and Tidy* (1889), 42 Ch. D. 23; 58 L. J. Ch. 665; *Re Cox and Neve* [1891], 2 Ch. 109; *Wauton* v. *Coppard* [1899], 1 Ch. 92; 68 L. J. Ch. 8; *Pemsel* v. *Tucker* [1907], 2 Ch. 191; 76 L. J. Ch. 621; Dart, 7th ed., 152. Unless the covenant has been waived: *Hepworth* v. *Pickles* [1900], 1 Ch. 108; 69 L. J. Ch. 55. As to the form of the covenant in the absence of a special condition, see *Re Poole and Clarke* [1904], 2 Ch. 173; 73 L. J. Ch. 612; and see Dart, 7th ed., 582, 583.

Conditions on sale of building lots.

(*t*) On a sale of building plots the conditions as to building, &c., may be either inserted in the conveyance to each purchaser or embodied in a general deed of covenant to be executed by all the purchasers. Sometimes it is intended that the covenants shall be mutually enforceable by the several purchasers *inter se*, and that for this purpose the vendor shall, as regards an unsold lot, stand in the place of a purchaser: *Reid* v. *Bickerstaff* [1909], 2 Ch. 305; 78 L. J. Ch. 753. Sometimes that the covenants shall be enforceable by the vendor only, so that he may be able to release or dispense with them if he thinks fit (see *Elliston* v. *Reacher* [1908], 2 Ch. 665; 78 L. J. Ch. 87; also *Mayner* v. *Payne* [1914], 2 Ch. 555; 83 L. J. Ch. 897), where this right was held exercisable by a subsequent purchaser of part of the building estate by reason of the use of the word vendor in his conveyance. A tenant for life is given power to release restrictive covenants (S. L. Act, 1925, s. 58); trustees for sale and personal representatives have similar powers. The distinction between imposing new restrictive covenants and of selling subject to conditions which are subsisting must be borne in mind.

materials, of each house shall be not less than £—— for a detached house, or £—— for a pair of semi-detached houses.

(5) The Purchaser of each Lot shall pay a proportionate part of the expense of keeping in repair the road in front thereof according to the extent of the frontage until the road shall be declared to be a highway repairable by the inhabitants at large, such proportion to be determined in case of difference by the Vendor's surveyor [*or* by the surveyor to the District Council].(*u*)

No. 124.

Each Purchaser to covenant with Vendor to observe conditions.

EVERY Purchaser shall in his conveyance in relation to the land conveyed covenant (*v*) with the Vendor to observe the above conditions [*or* the conditions referred to in the particulars] so far as the same apply to the Lot purchased by him, and the covenant shall be framed for the benefit of the owners and occupiers for the time being of the —— Estate [or the parts thereof for the time being remaining unsold], but the covenantor shall, as regards any covenant restrictive of the user of the land, be personally liable therefor so long only as he is owner of the land or any part thereof in regard to which the breach occurs.(*w*)

No. 125.

The several Purchasers to execute a general deed of covenants.

(1) A deed has been prepared (a draft of which may be seen at the office of the Vendor's solicitors, during office hours within fourteen days before the sale) containing covenants by the

(*u*) The above are given as specimen conditions; they will, of course, be varied according to the instructions. The next form must be used when the restrictive covenants are to be inserted in each conveyance. The restrictions are usually placed in the particulars.

Powers of tenant for life, trustees for sale, &c.

(*v*) The covenant by the purchaser made after 1925 is deemed to be made on behalf of himself, his successors in title and the persons deriving title under him or them, without referring to the successors and other persons, and "successors in title" include the owners and occupiers of the land to be bound: L. P. Act, 1925, s. 79. The covenant is deemed to be made with the vendor, his successors in title and the persons deriving title under him or them without referring to the successors and other persons, and "successors in title" include the owners and occupiers for the time being of the land of the vendor intended to be benefited: *ib.*, s. 78; see also s. 80 as to covenants running with the land. After 1925 the benefit of a covenant may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could before 1926 be made to do so: *ib.*, sub-s. 3. A tenant for life may enter into restrictive covenants: S. L. Act, 1925, s. 49 (1). He may also, with the consent in writing of the trustees, release a restrictive or other covenant: *ib.*, s. 58 (2). He may grant an option to purchase the settled land or any easement, right or privilege over it: *ib.*, s. 51. But, save with the leave of the court under s. 64, it seems that he cannot grant an option to purchase the release of a restrictive covenant entered into with him for the benefit of the settled land: *Palmer* v. *Gr. J. Waterworks* [1902], 86 L. T. 352. Whatever powers a tenant for life has are given also to trustees for sale (L. P. Act, 1925, s. 28); and to personal representatives: Ad. of E. Act, 1925, s. 39.

(*w*) As to the imposition of restrictive and other covenants, see General Conditions of 1925, cl. 32. The positive covenants must be allowed to affect

several Purchasers to observe the conditions mentioned in the particulars so far as the same are applicable to the several Lots purchased by them respectively [and a similar covenant by the Vendor as regards any Lot or Lots not sold].

(2) Every Purchaser shall execute the said deed on the completion of his purchase, and his conveyance will be made subject to the provisions of that deed.

(3) The said deed, with the documents of title in the Vendor's possession, will be retained by the Vendor, who will at the expense of a Purchaser requiring it give to every Purchaser a statutory acknowledgment of his right to production and delivery of copies thereof [and an undertaking for the safe custody thereof].(*x*)

No. 126.

Where building restrictions are to be imposed on part of an estate, the Vendor reserving a power to vary the conditions and deal generally with the estate.

(1) The [Each] Purchaser shall in his conveyance in relation to the land conveyed covenant with the Vendor (so that the covenant shall in regard to the restrictive conditions mentioned in the particulars, so far as practicable, be enforceable by the owners and occupiers for the time being of the —— Estate, or the part thereof remaining unsold) that the Purchaser will observe and perform the restrictions and stipulations mentioned in the particulars relating to building and other matters [so far as they affect the land acquired by him].

(2) The said conveyance shall reserve a power for the Vendor and the persons deriving title under him, owners for the time being of the part of the said Estate remaining unsold, at the request of the Purchaser or the persons deriving title under him, to release or vary any of the said restrictions or stipulations.

(3) Nothing herein or in the said conveyance contained shall operate to impose any restrictions on the manner in which the Vendor or the persons deriving title under him may deal with the whole or any part of the said Estate for the time being remaining unsold or be otherwise deemed to create a building scheme, and effect shall be given to this condition in the said conveyance.

No. 126A.

The same as to registered land.

(1) As (1) in 126, substituting "transfer" for "conveyance."

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the estate and effects of the covenantor for all time. They do not in equity affect the assigns with notice.

Positive covenants.

(*x*) The words in square brackets should be omitted if the vendor is a trustee or mortgagee. A mortgagee, where the mortgage is made after 1911, has extensive powers to constitute a building scheme: L. P. Act, 1925, s. 101 (2). This mode of imposing restrictive covenants is not suitable for registered land.

(2) The transfer shall reserve a power for the registered proprietor for the time being of the part of the Estate remaining unsold at the request of the registered proprietor of the land transferred to release or vary any of the said restrictions or stipulations.

(3) Nothing herein or in the transfer shall operate to impose any restrictions on the manner in which the registered proprietor may deal with the whole or any part of the Estate for the time being remaining unsold or be otherwise deemed to create a building scheme and effect shall be given to this condition in the transfer.

No. 127.

Reservation of right to deal with land unsold for building purposes.

INASMUCH as the property, or the greater part thereof, is bounded by other land belonging to the Vendor, the Purchaser and the persons deriving title under him shall not become entitled to any right of light and air which would in any way prejudicially affect the free and unrestricted user by the Vendor and the persons deriving title under him of any adjoining property of the Vendor for building or other purposes, and the conveyance to the Purchaser shall contain a reservation or provision for giving effect to this condition.(*y*)

Light and air.

(*y*) A similar, but not quite so wide, reservation is provided for under General Conditions of 1925, cl. 30 (1). There is no implied reservation to a vendor of the right of access of light and air to his adjoining property: *Wheeldon* v. *Burrows* (1878), 12 Ch. D. 31; 48 L. J. Ch. 853; *Ray* v. *Hazeldine* [1904], 2 Ch. 17; 73 L. J. Ch. 537; and see Dart, 7th ed., 405. A contract for sale of a house with windows overlooking the land of a third party implies no reservation or warranty that the windows are entitled to the access of light over that land: *Greenhalgh* v. *Brindley* [1901], 2 Ch., at p. 328; 70 L. J. Ch. 740. Though windows are shown on a sale plan this does not imply a right to light: *Smith* v. *Colbourne* [1914], 2 Ch. 533; 84 L. J. Ch. 112. Where a person grants a stable adjoining land which he owns but in the occupation of a lessee from him, and subsequently a grant is made of the adjoining land and the lease is merged in the freehold reversion, the grantor and the persons deriving title under him to the adjoining land will be restrained from interfering with the reasonable use of the stable by preventing the access of air: *Cable* v. *Bryant* [1908], 1 Ch. 259; 77 L. J. Ch. 78. As to water rights, see *Westwood* v. *Heywood* [1921], 2 Ch. 130; 90 L. J. Ch. 515; there can be no prescriptive right to light passing through doorways as s. 3 of the Prescription Act, 1832, does not apply to them: *Levet* v. *Gas Light and Coke Co.* [1919], 1 Ch. 24; 88 L. J. Ch. 12. As to the law generally on light and air, see Gale, 10th ed., p. 291, *et seq.*; *Colls* v. *Home and Colonial Stores* [1904], A. C. 179; 73 L. J. Ch. 484; *Ambler* v. *Gordon* [1905], 1 K. B. 417; 74 L. J. K. B. 185; *Jolly* v. *Kine* [1907], A. C. 1; 76 L. J. Ch. 1; *Hyman* v. *Van den Bergh* [1908], 1 Ch. 167; 77 L. J. Ch. 154; *Davis* v. *Marrable* [1913], 2 Ch. 421; 82 L. J. Ch. 510; *Bailey* v. *Holborn and Frascati Ld.* [1914], 1 Ch. 598; 83 L. J. Ch. 515; *Paul* v. *Robson*, 41 Ind. App. 180; 83 L. J. P. C. 304; *Mallam* v. *Rose* [1915], 2 Ch. 222; 84 L. J. Ch. 934; *Litchfield Speer* v. *Queen Anne's Gate Syndicate* [1919], 1 Ch. 407; 88 L. J. Ch. 137; *Semon & Co.* v. *Bradford*

No. 128.

(1) All mines, minerals, and mineral substances within or under the several Lots offered for sale shall be excepted and reserved out of each conveyance,(*z*) together with full power for the persons entitled to such mines, minerals, and mineral substances to work and get the same [either by entry on the surface or] by underground workings, and without any obligation to leave any subjacent or lateral support for the surface or any buildings for the time being erected thereon or any adjoining land or minerals (*a*) belonging to the Vendor, and for the purpose of such workings from time to time or at any time, with or without horses, carts, waggons, machinery, and other implements, materials and things, to [enter upon and use the surface] sink pits and quarries, and do all other acts and things necessary or proper for working or getting such mines, minerals, and mineral substances, but so, nevertheless, that proper compensation shall be paid to any owner of the surface or of any adjoining land or minerals in respect of any damage thereto arising by reason of the exercise of the powers and rights reserved as aforesaid, and so that the amount of such compensation in case of dispute shall be settled by the arbitration of two arbitrators or their umpire pursuant to the provisions of the Arbitration Act, 1889, or any statutory modification thereof.

Exception of minerals from each Lot.

(2) Each Lot shall be conveyed, with an exception of the fee simple in the said minerals and substances and with a reservation of the said powers, in accordance with section sixty-five of the Law of Property Act, 1925.

(3) Each Purchaser shall give to the Vendor a separate acknowledgment and undertaking (to be prepared by the Vendor but executed by the Purchaser free of expense to the Vendor) for the production and safe custody of his conveyance [*or, in the case of registered land*, each transfer shall contain an undertaking by the Purchaser for an application to be made to the registrar to

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Corporation [1922], 2 Ch. 737; 91 L. J. Ch. 602; and as to the measure of damages *Griffith* v. *Clay* [1912], 2 Ch. 291; 81 L. J. Ch. 271; *Wills* v. *May* [1923], 1 Ch. 317; 92 L. J. Ch. 253.

(*z*) See Chap. X, pp. 208 to 212, *supra*.

(*a*) Tenants for life (S. L. Act, 1925, s. 50), trustees for sale (L. P. Act, 1925, s. 28) and personal representatives (Ad. of E. Act, 1925, s. 39) may deal with the surface separately from the minerals and *vice versa*; and under L. P. Act, 1925, s. 101 (2), a mortgagee may sell mines and minerals apart from the surface or *vice versa* without the leave of the court, where the mortgage was made after 1911. Where that sub-section does not apply, or is not made applicable to the mortgage, the court has power to authorise such dealings: *ib.*, s. 92.

Power for trustees, &c., to except minerals.

enter notice of the exception of the said minerals and substances and of the reservation of the said powers].

No. 129. Tenants' rents equitably apportioned.

THE several Purchasers shall (but not so as to confirm any tenancy liable to be determined) take their conveyances subject to and with the benefit of the apportioned rents stated in the particulars, and shall not require the assent of any tenant thereto, nor otherwise require such rents to be legally apportioned.(*b*)

No. 130. Leaseholds sold at apportioned rents.

WHERE any Lots are held or are to be assigned at apportioned rents, the several Purchasers shall (but not so as to confirm any tenancy liable to be determined) accept their assignments at or subject to such apportioned rents, and shall not require the consent of the reversioner to be shown or to be obtained to the apportionment nor require the rents to be otherwise legally apportioned.(*c*)

No. 131. Easements in favour of other Lot.

(1) Where any Lot appears by the particulars or plan to be offered for sale subject to an easement for the benefit of any other Lot, the conveyance of the servient Lot shall be made expressly subject to a reservation of the easement intended to affect it, and so far as practicable the conveyance of the dominant Lot shall be executed and bear date before the conveyance of the servient Lot and contain a grant of the easement.

(2) But if the servient Lot is conveyed before the dominant Lot, or the latter is not sold, then the servient Lot shall be conveyed to the Purchaser thereof with a reservation of the easement in fee simple to the Vendor or other the owner for the time being of the dominant Lot.(*d*)

Equitable apportionment of rents.

(*b*) For a corresponding condition, see General Conditions of 1925, cl. 22. This condition is used where the consent of the tenants to an apportionment cannot be obtained. The apportionment under this condition, only takes effect in equity, and does not bind the tenants: *Bliss* v. *Collins* (1822), 5 B. & Ald. 876. The L. P. Act, 1925, s. 140, provides for the apportionment of conditions in a lease whenever made where the rent is apportioned, but does not affect the operation of a severance of the reversion or partial cesser of the term before 1926. The Conv. Act, 1881, s. 12, only applied to leases made after 1881.

Leaseholds assigned at apportioned rents.

(*c*) For the implied covenants, see Pt. X of 2nd Sch. to L. P. Act, 1925, and for the remedies, see s. 190 (4). This condition is used where leaseholds are to be assigned at apportioned rents, but the more usual and proper way of making title is to sub-demise all the lots except one and to assign that subject to the new underleases: see General Conditions of 1925, cl. 27.

Reservation and grants of easements *de novo*.

(*d*) See General Conditions of 1925, cl. 30 (2). If the conveyance of the dominant lot is executed first the vendor will grant the new easement. If the vendor retains the dominant lot there will be a reservation of the easement in the conveyance of the servient lot. The purchaser need not execute this conveyance: L. P. Act, 1925, s. 65, overruling the practice under *Wickham* v. *Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153; *May* v. *Belleville* [1905],

[*In the case of registered land add* (3) Each transfer of a servient Lot shall contain an undertaking by the Purchaser to permit a notice of the easement to be entered on the register.]

No. 132.

As to indemnity against perpetual rentcharges.

(1) THE respective perpetual rent-charges of £—— and £——, subject to which Lots —— and —— are respectively sold, are charged upon lands comprised in such Lots respectively, together with lands of less value comprised in other Lots, which are intended to be sold free therefrom.(*d*)

(2) Lots —— and —— will be conveyed charged exclusively with the rents of £—— and £—— respectively in exoneration of the other lands affected.

(3) The Purchasers of Lots —— and —— shall be liable to give the implied covenants mentioned in paragraph (i) of Part VIII of the Second Schedule to the Law of Property Act, 1925, with the following variations, namely:—As if the expression "entire rent" were substituted for "apportioned rent" wherever that expression occurs, and as if the words in brackets referring to the entire rent had been omitted.

(4) The implied covenants by the Vendors mentioned in paragraph (ii) of the same Part of the said Schedule, shall be given subject to the following variations, namely—as if the references to the payment of the balance of the rentcharge had been omitted.

(5) The appropriate remedies conferred by section one hundred and eighty-nine of the Law of Property Act, 1925, shall apply for the benefit of the respective owners for the time being of the Lots affected by the original rentcharge.

(6) The concurrence of the owners of the rentcharges to such exclusive charge as aforesaid shall not be required. [But the Vendors will, at the request and cost of the Purchasers of the Lots which are to be charged exclusively as aforesaid, and without prejudice to that charge, take the necessary steps under section one hundred and ninety-one of the said Act for the redemption of the said rentcharges, but no objection shall be made on account of any unavoidable delay in completion attributable to such proceedings.]

No. 133.

Charge to be indemnity against annual payment.(*d*)

(1) Lot —— is subject to a perpetual rentcharge of £—— payable to the poor of L——, which is also charged on other lands of the Vendor of considerable value. Lot —— will be

2 Ch. 605; 74 L. J. Ch. 678; the vendor should either take a duplicate or obtain an acknowledgment for production.

(*d*) See L. P. Act, 1925, ss. 77 and 189; General Conditions of 1925, cl. 27.

Indemnity against rentcharges.

conveyed discharged so far as may be from the said rentcharge, and to the intent that the same shall be charged exclusively on the other lands aforesaid of the Vendor in exoneration of Lot ——.

(2) A memorandum of such charge shall be indorsed on one of the title deeds of the other lands selected by the Vendor, but he shall not be required to show title to such lands, and the Purchaser shall be satisfied with the aforesaid charge [*or, where the other land is registered land.* The Vendor will permit a note of the exclusive charge and exoneration to be noted on the register of the other land charged on the application and at the expense of the Purchaser.]

(3) The Purchaser of that Lot shall not be required to give any implied covenants, but the Vendor will in the conveyance give the implied covenants mentioned in paragraph (ii) of Part VIII of the Second Schedule to the Law of Property Act, 1925, subject to the following variations, namely: First, as if those covenants related exclusively to the payment of rent, references to breaches of covenant being omitted; and Secondly, as if the entire rentcharge were referred to in place of the balance of a rentcharge.

(4) The Purchaser shall give to the Vendor a separate acknowledgment and undertaking (to be prepared by the Vendor but to be executed free of expense to the Vendor by the Purchaser) for the production and safe custody of his conveyance. [*Omit this paragraph in the case of registered land.*]

No. 134.

Sale by an absolute owner free from an equitable interest.(*e*)

(1) The property is [*state the nature of the equitable interest, created for money's worth for instance*] charged in equity with a sum of £2,000, which will become payable to the —— L. Insurance Society on the death of the Vendor under a Grant dated —— made for money's worth.

(2) The Vendor will before completion pursuant to section 2 (2) of the Law of Property Act, 1925, vest the property in a trust corporation [*or* in two trustees approved by the court], on trust for sale for providing for the said equitable interest [*or* will before

Registered land.

(*e*) In the case of registered land Form 134 is not required at all unless the equitable interest is protected on the register. If it is protected then the proper course will be to transfer the land to the trustees for sale, who must be registered, or apply for restrictions to be entered which are applicable to settled land and at the same time arrange with the registrar to cancel the entry which stands in the way of the exercise of the statutory overreaching powers.

completion pursuant to section twenty-one of the Settled Land Act, 1925, by a vesting deed, declare that the property is vested in him on trust to give effect to all equitable interests and powers affecting the same which deed shall be executed by a trust corporation [*or* two or more individuals approved by the court], who shall be stated to be the trustees of the settlement for the purposes of the said Act].

(3) Accordingly the Purchaser shall not make any objection on account of the existence of the said equitable interest nor on account of title being made in the manner aforesaid.(*f*)

No. 135.
Indemnity against Lands Improvement charges.

(1) The whole or nearly the whole of estates containing upwards of —— acres, devolving under the same title as and including the property now offered for sale, are charged with Lands Improvement rentcharges, not exceeding altogether the yearly sum of £—— for the remainder of terms of years not in any case exceeding —— years unexpired.

(2) The Vendor shall not be required to obtain a release of these rentcharges under section one hundred and ninety-one of the Law of Property Act, 1925, or otherwise, and each Purchaser shall take his conveyance subject thereto, but with a provision in his conveyance charging the same primarily on the other lands charged therewith, and not now offered for sale, in exoneration of the land sold to such Purchaser.

(3) The Vendor will give the implied statutory covenant with each Purchaser to indemnify him and the land purchased by him against any claim in respect of such rentcharges, and each Purchaser shall accept such charge and covenant as a sufficient discharge of the land sold from all such rentcharges, and shall not require any release thereof.

Modes of discharging or over-reaching incumbrances or family charges.

Purchaser's right to best title.

(*f*) If the equitable interest had been a family charge within S. L. Act, 1925, s. 1 (1) (v), it would have created a settlement, title would have been made under s. 20 of that Act and the methods in the text would not have been available. As to a purchaser's right to have a title free from an equitable interest, see L. P. Act, 1925, ss. 42-43. For an alternative method, on a sale or exchange, for discharging incumbrances by payment into court: *ib.*, s. 50. The court may declare other land, besides that sold or exchanged to be free from the incumbrance, and although on a previous occasion the order was confined to the land then sold or exchanged. A purchaser is not bound to make an application under that section: *Re G. N. Ry. and Sanderson* (1884), 25 Ch. D. 788; 53 L. J. Ch. 445. Portions and jointures can be overreached under the S. L. Act, 1925, unless the money has been raised by mortgage: s. 72 (2). Where there is a compound settlement title must be made thereunder and not in right of an inferior or subsequent settlement: *ib.*, proviso at end of s. 1 (1). In this way a purchaser becomes entitled to have the best title which can be made under the Act.

(4) Each Purchaser shall be entitled to the appropriate remedies conferred by section one hundred and ninety of the Law of Property Act, 1925.

No. 135A.

The same as applied to registered land.

(1) *As in No.* 135.

(2) *As in No.* 135, *substituting* " transfer " *for* " conveyance " *and either* (i) *omitting from* " but with a provision " *to the end or* (ii) (*if so intended* (*g*)) *substituting for it* " but the vendor will execute a general equitable charge, charging the said rent-charges primarily," *&c., as in No.* 135 *to the end of the paragraph.*

(3) *As in No.* 135 *omitting, if alternative* (*i*) *is adopted in para.* 2 *the words* " charge and."

(4) Subject to the provisions of the Land Registration Act, 1925, as to the effect of registered dispositions for valuable consideration, each Purchaser (*&c., as in No.* 135).

No. 136.

Sale during a minority.

THE Vendors, being personal representatives, hold the property ultimately in trust for an infant, but inasmuch as administration has not been completed no objection shall be made on account of the purchase-money being paid to the Vendors.

[*or* THE Vendors, being personal representatives, hold the property in trust solely for an infant, and having completed administration the purchase-money will be paid to or in accordance with the directions of the trustees of the settlement, who will join in the conveyance to give a receipt, but the Purchaser shall not be entitled to investigate the equitable interests or the title of the trustees to give a receipt.]

[*or* THE Vendors are selling as statutory owners, being the trustees of a settlement during a minority, and seeing that a vesting instrument has been executed in their favour a Purchaser shall not be entitled to investigate the equitable interests and the Vendors shall only be required to give the covenants for title implied by reason of their being expressed to convey as trustees.]

[*or* THE Vendors are selling as trustees for sale, the trust for sale having arisen by reason of an infant having become beneficially entitled in possession to the property for an estate in fee simple [*or* for a term of years absolute] jointly with a person of full age.]

[*or* THE Vendor is selling as tenant for life [*or* as a person having the powers of a tenant for life], the other person

(*g*) This charge can be protected by a caution against the land charged : L. R. Act, 1925, ss. 54 and 59 ; L. C. Act, 1925, s. 10 (1) Class C. (iii). Unless the number of intended sales is very small alternative (ii) is not recommended.

interested for a life interest being an infant, and as a vesting instrument has been executed in favour of the Vendor, a Purchaser shall not be entitled to investigate the equitable interests and the Vendor shall only be required to give the covenants for title implied by reason of his being expressed to convey as trustee].(*h*)

No. 137.

Sale on behalf of a lunatic or defective tenant for life.

THE Vendor being a lunatic [defective] tenant for life the sale is made on his behalf by his committee [receiver] under an Order in Lunacy made under section twenty-eight of the Settled Land Act, 1925, and no covenants for title shall be given by the committee [receiver] save those implied by reason of his being expressed to convey as such committee [receiver].

No. 138.

Sale by charity trustees.

THE Vendors are the managing trustees of the —— Charity and are selling under the powers conferred by section twenty-nine of the Settled Land Act, 1925, the requisite consent to the sale having been given under an Order made on the —— day of —— by the Charity Commissioners [Board of Education] [*add any conditions, &c., imposed by the order*].(*i*)

No. 139.

Sale by trustees for sale of land formerly held in undivided shares.(*j*)

THE property immediately before 1st January, 1926, having been vested in the [predecessors in title of the] Vendors as

(*h*) As to the different cases covered by these alternative conditions, see S. L. Act, 1925, ss. 26, 27 and 110 (2); 2nd Sch., para. 3; L. P. Act, 1925, s. 19; 1st Sch., Pt. III. Where there are two or more persons entitled as tenants for life as joint tenants, and they are not all of full age, such of them as are of full age together constitute the "tenant for life," but this does not affect the beneficial interest of the infants: S. L. Act, 1925, s. 19 (3). A vesting deed will be executed under 2nd Sch., para. 1, where this is the position on 1st January, 1926, in favour of the adult tenants for life, though the legal estate will have vested in them under L. P. Act, 1925, 1st Sch., Pt. II.

Registered land.

Form No. 136 will not be required for registered land, because the fact of a minority does not appear on the register. For the various cases provided for in the form the land will always be registered either (i) in the name of a deceased proprietor awaiting the registration of the personal representatives or of a transfer from them (Rule 170), or (ii) in the name of personal representatives entered as such (Rule 168) with or without restrictions, or (iii) in the name of a proprietor or proprietors (being in fact, though not so stated on the register, statutory owners, trustees for sale, tenant for life, or person having the powers of a tenant for life) with or without restrictions.

(*i*) The powers conferred by the S. L. Act, 1925, on the managing trustees of a charity are wider than the powers conferred by the Charitable Trusts Acts.

Implied trusts for sale.

(*j*) As to this condition, see L. P. Act, 1925, 1st Sch., Pt. IV, para. 1; as to other implied trusts for sale, see L. P. Act, 1925, s. 25 (4), under a trust to retain or sell; s. 31, mortgaged property where right of redemption is barred; s. 32, land purchased by trustees of a personalty settlement; s. 34, dispositions in undivided shares; s. 36, beneficial joint tenancies; s. 19 (2), conveyance to an infant and a person of full age; 1st Sch., Pt. III, para. 2, legal estate formerly vested in an infant and a person of full age; Pt. IV, para. 2, personal

trustees [as personal representatives] in trust for certain persons as tenants in common [as co-parceners] the Vendors will sell under the implied trust for sale and a Purchaser shall not make any enquiry respecting the undivided shares.

[*or* THE property immediately before 1st January, 1926, having been vested in not more than four persons of full age absolutely and beneficially entitled as tenants in common free from incumbrances affecting undivided shares the Vendors [who are the successors in title of the said beneficiaries under the statutory joint-tenantship] will sell, *&c., as above.*]

[*or* THE property immediately before 1st January, 1926, having been settled land held under one and the same settlement in undivided shares became vested in the trustees of that settlement, who are now the Vendors, on trust for sale, and accordingly the Vendors will sell, *&c.*]

[*or* THE property became vested in the Public Trustee by virtue of sub-section (4) of paragraph one of Part IV of the 1st Schedule to the Law of Property Act, 1925, and the Vendors were appointed to be trustees in his place, and accordingly will sell, *&c.*]

No. 140.

Sale by mortgagees. (*k*)

THE Vendors being mortgagees under a charge by way of legal mortgage [*or* by demise *or* by sub-demise] will under the statutory power convey the fee simple [head term] affected by their mortgage.

No. 140A.

Registered land. Vendor registered as personal representative.

THE title to the land is registered under the Land Registration Act, 1925, the Vendor being the registered proprietor "as

representatives holding in trust for tenants in common; Pt. V, para. 2, open spaces held in common; Pt. VI, tenancies by entireties.

Form No. 139 has no application to registered land. The four cases dealt with arise under the four subsections of para. 1 of Part IV of Schedule I of the Law of Property Act, 1925. In some cases (notably in the first case, where the vendors or their predecessors held the legal estate in the entirety immediately before 1926), the vendors will be between them the registered proprietors of the entirety at the time when the contract is being drawn up and no condition will be needed. In other cases they will be obliged (notwithstanding any stipulation to the contrary) either to be themselves registered as proprietors of the entirety or to make arrangements with the proprietors of the entirety for the execution of transfers to the purchasers: L. R. Act, 1925, s. 110 (5).

(*k*) As to a mortgagee's power to sell and convey, see L. P. Act, 1925, ss. 88, 89 and 101 to 104. Save where the mortgage includes part only of the land comprised in the lease and the rent has not been legally apportioned, the head term can, under s. 89, be conveyed without the aid of an irrevocable power of attorney granted under s. 126. Where the mortgagee cannot convey the head term he may stipulate to sell and convey the mortgage term only: s. 42.

executor (*or* administrator) of A. B. deceased." The Purchaser shall not make any enquiry as to the terms of the Will (*or* as to the intestacy) but shall accept a transfer from the Vendor without regard to the reference to the executorship (*or* administration).(*l*)

No. 140B.

Registered land. Vendor a personal representative but not yet registered as proprietor.

THE title to the land is registered under the Land Registration Act, 1925, in the name of a deceased proprietor whose executor (*or* administrator) the Vendor is. The Vendor will at the Purchaser's option (*m*) either at his own expense, obtain registration of himself as such executor (*or* administrator) or produce to the Purchaser the Probate (*or* Letters of Administration) and execute a transfer to the Purchaser under rule 170 of the Land Registration Rules without being himself registered as proprietor. In the latter case he will produce the Probate (*or* Letters of Administration) at the registry to enable the Purchaser to obtain registration of the transfer. In either case the Purchaser shall make no enquiry as to the terms of the Will or as to the intestacy.

No. 140C.

Registered land.

Registrar's certificate as to a dealing being authorised.

THE Vendor is registered as proprietor under the Land Registration Act, 1925, subject to a restriction (*or* inhibition) that no disposition is to be registered unless authorised by the Settled Land Act, 1925 (*or otherwise as the case may be*). The Vendor will obtain a certificate from the Registrar under rule 237 of the Land Registration Rules, 1925, that the sale is authorised either unconditionally or subject to limitations or conditions. The Purchaser shall accept such certificate as proof that a transfer from the Vendor complying with such limitations or conditions (if any) will be registered and that the restriction will be removed (*or otherwise disposed of*) and shall not make any other enquiry in regard to the restriction or raise any objection in reference thereto.(*n*)

(*l*) A transfer from such a proprietor is registered without any question in the registry as to the will or intestacy.

(*m*) The first alternative is required under L. R. Act, 1925, s. 110 (5).

(*n*) The procedure here referred to is only needed where the restriction is of a complicated or uncertain character. Where the restriction is of a simple character (*e.g.*, the consent of a named person only or payment of purchase-money to not less than two persons) there is no need for it.

Section VI.

Note.—The forms in this section will apply generally to registered land. Even where the title is absolute the documents prior to registration will sometimes be of use in regard to incidental matters (*e.g.* boundaries).

As to Documents.

No. 141.

Documents, where retained by Vendor as beneficial owner.

The Vendor will retain all documents relating to any property not comprised in this sale and retained by him, and will give, at the cost of the [any] Purchaser [requiring it], a statutory acknowledgment of the right of the [such] Purchaser to production of documents so retained, and to delivery of copies thereof, and also a statutory undertaking for safe custody thereof.(*a*)

No. 142.

Where retained by Vendor as mortgagee or trustee.

The Vendor will retain all documents relating to any property not comprised in this sale and retained by him, and will give, at the cost of the [any] Purchaser [requiring it], a statutory acknowledgment of the right of the [such] Purchaser to production of documents so retained, and to delivery of copies thereof, but being a mortgagee [or trustee *or* personal representative] shall not be required to give any undertaking or covenant for the safe custody thereof.(*b*)

No. 143.

Documents, where delivered to Purchaser who gives highest price.(*c*)

The provisions of clause 34 of the General Conditions of 1925 shall apply to documents.(*c*)

Retainer of documents.

(*a*) As to documents generally, see General Conditions of 1925, cl. 34. A vendor is entitled to retain documents where he retains any part of the land to which the documents relate, or the document creates a subsisting trust, or is an instrument relating to the appointment or discharge of a trustee of a subsisting trust: L. P. Act, 1925, s. 45 (9).

(*b*) A mortgagee or trustee may safely give an acknowledgment of the right to production and delivery of copies, as it only binds him to produce while he has possession (L. P. Act, 1925, s. 64 (2) (*b*)); it gives no right to damages.

Mortgagor's right to production.

A mortgagor, in whom the equity of redemption is still vested, and whose mortgage was made after 1881, is entitled to production: L. P. Act, 1925, s. 97 (1); and so are the persons deriving title under him: s. 205 (1) (xii). As between mortgagor and mortgagee, the latter is liable in case of the loss or destruction of the documents while in his possession or under his control: *Hornby* v. *Matcham* (1848), 16 Sim. 325; 17 L. J. Ch. 471; *Brown* v. *Sewell* (1853), 11 Hare, 49; 22 L. J. Ch. 1063; see also *James* v. *Rumsey* (1879), 11 Ch. D. 398; 48 L. J. Ch. 345, where the mortgagor was held entitled to an indemnity, but not to compensation; and see Dart, 7th ed., 490, and *cf.* *Gilligan* v. *National Bank* [1901], 2 Ir. R. 513. But a mortgagee when paid off is not liable for not delivering the documents to the person having the best right thereto unless he has notice of that right: L. P. Act, 1925, s. 97 (2).

Rights of Purchasers *inter se* to documents.

(*c*) In the absence of any condition the purchaser of the lot which is sold for the highest price is entitled to the custody of the documents: *Griffiths* v. *Hatchard* (1854), 1 K. & J. 17; 23 L. J. Ch. 957. Where the conditions prescribe that the purchaser of the "largest lot" shall have the deeds, the

No. 144.

Deeds to be delivered to Purchaser, who is to give statutory acknowledgment, &c., to Vendor.(*d*)

DOCUMENTS of title which relate not only to the property now offered for sale, but also to other property retained by the Vendor, will be delivered to the Purchaser, and he shall give to the Vendor an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody, such acknowledgment and undertaking to be prepared by and at the expense of the Vendor, but to be perused and executed by the Purchaser at his own expense.

No. 145.

As to deeds to be retained by a mortgagee where mortgagor is Vendor.(*e*)

(1) The [*or* Some of the] documents of title are in the custody of a mortgagee, and will remain in his custody after the completion of this purchase, as relating also to other property.

(2) The mortgagee will join in the conveyance and give to the Purchaser a statutory acknowledgment of his right to production and delivery of copies of the documents, but the Purchaser shall not require a covenant or undertaking for their safe custody either from him or from the Vendor.

No. 146.

Documents not in Vendor's possession.

THE Vendor shall not be required to procure the production, or trace or state who has the custody of any document not in his possession, or to furnish any abstract or copy thereof, or to give any information relating thereto not within his knowledge.(*f*)

No. 147.

Where documents subsequent to commencement of title cannot be produced, recital to be evidence.

IF any document, dated —— years or upwards before the day of sale, be not in the Vendor's possession, and the possessor thereof is either unknown or refuses production, the recital of that document contained in any deed [dated —— years or upwards before the day of sale] shall be taken as conclusive evidence of the material contents and due execution thereof, and no abstract or further evidence, whether by production of the original or otherwise, shall be required of the contents of that document.

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purchaser of the largest individual lot, and not of several aggregate lots, is entitled to them: *Griffiths* v. *Hatchard, supra*; *Scott* v. *Jackman* (1855), 21 Beav. 110.

(*d*) This condition is sometimes adopted where the property retained by the vendor is very small, *e.g.*, a strip of land near a road. It should not be used by a vendor who is a trustee.

Documents in possession of mortgagee or trustee for the Vendor.

Subject to any stipulation to the contrary, the cost of producing documents in the possession of a mortgagee or trustee for the vendor, will be borne by the vendor (L. P. Act, 1925, s. 45 (4) (10)); the costs of furnishing copies will be borne by the purchaser: *ib.*

(*e*) See General Conditions of 1925, cl. 34 (4).

Lost deeds.

(*f*) See General Conditions of 1925, cl. 34 (6). As to secondary evidence of a lost deed, see *Re Halifax, &c., Co. and Wood* [1898], 79 L. T. 183, 536. The loss does not release the purchaser from the contract if proper secondary evidence is furnished: see *S. C.* on appeal, *ib.*, 536.

No. 148.

Plain copy of lost deed to be sufficient.

(1) Inasmuch as a deed dated the —— being a conveyance of Lot —— to the Vendor [*or* being, &c., *describe the nature of the deed*], has been lost, the Purchaser shall be satisfied with the production of a document purporting to be a plain copy thereof, and shall assume that the said deed was duly executed by all the parties thereto.(*g*)

(2) The Purchaser shall, at his expense, if he so requires, be furnished with a statutory declaration respecting the searches made to discover the deed so lost.

No. 149.

Production of attested copy of any deed not in Vendor's possession to be sufficient.

THE Purchaser shall not require the production, nor make any objection on the ground of the non-production, of any document [*in the case of registered land insert* "except the land certificate," *or if the sale is by the proprietor of a charge* "the charge certificate"](*h*) not in the Vendor's possession of which the Vendor shall produce an attested copy.(*i*)

No. 150.

Delivery of documents not in Vendor's possession.

THE Vendor shall not be required to procure or pay any costs of procuring delivery to the Purchaser of any documents (*in the case of registered land insert as in Form* 149) (*h*) not in the possession of the Vendor.(*j*)

No. 150A.

Registered land or charge certificate not in Vendor's possession.

THE land certificate (*or if the sale is by the proprietor of a charge* the charge certificate) is not in the Vendor's possession. The Purchaser shall pay the cost of obtaining possession thereof.(*h*)

No. 150B.

Registered land or charge certificate lost or destroyed.

THE Vendor's land certificate [*or, if the sale is by the proprietor of a charge*, charge certificate] having been lost [*or* destroyed in a fire at X., *or as the case may be*], he will be unable to produce it for the Purchaser's inspection or registration, and the Purchaser shall make no objection on this ground. But the Vendor will, when required by the Purchaser, make or concur in making an application for a new land [*or* charge] certificate and will furnish such evidence as may be available and generally will execute any instrument and do any act or thing in his power that may be necessary to enable a new land [*or* charge] certificate to be issued.(*h*)

(*g*) In the absence of a condition, see Chap. IV p. 95.

(*h*) Under L. R. Act, 1925, s. 110 (6), the vendor is bound to produce the land (or charge) certificate and, if it has been lost or destroyed, to pay, notwithstanding stipulation to the contrary, the costs occasioned.

Vendor's liability to produce documents.

(*i*) Apart from condition, the vendor is bound to produce the originals of all deeds, steward's copies of court rolls, and other instruments necessary to verify the abstract, except documents which are of record or have been lost or destroyed: Dart, 7th ed., 155, 349, 364.

Handing over deeds on completion.

(*j*) See General Conditions of 1925, cl. 34 (6); L. P. Act, 1925, s. 45 (4), does not affect the right of the purchaser to have the title deeds handed over on completion at the vendor's expense: *Re Duthy and Jesson* [1898], 1 Ch. 419: 67 L. J. Ch. 218.

Section VII.

Note.—All the forms in this section, except No. 155, will apply to registered land.

As to Compensation and Miscellaneous Matters.

No. 151.

Errors in description (no compensation).

(1) The property is [several Lots are] believed to be and shall be taken as correctly described, and any incorrect statement, error, or omission found in the particulars, conditions or sale plan shall not annul the sale, nor entitle the [any] Purchaser to be discharged from his purchase, nor shall the Vendor or [any] Purchaser claim or be allowed any compensation in respect thereof.(*a*)

No. 152.

Errors in description (compensation).(*b*)

(2) This condition shall have effect in substitution for clause 35 of the General Conditions of 1925.

The provisions of clause 35 of the General Conditions of 1925 shall apply, with respect to errors and compensation.

No. 153.

Errors in estimated outgoings.

(1) Outgoings stated as estimated shall not be taken as correctly stated, and a Purchaser shall be taken as purchasing subject to the actual outgoings, whatever the amount may be.

No compensation effect of condition as regards specific performance.

(*a*) Without this condition the vendor, where the error is considerable, cannot insist on specific performance: *Lee* v. *Rayson* [1917], 1 Ch. 613; 86 L. J. Ch. 405; while the purchaser can, however small the error, insist on the vendor giving him as much as he contracted to sell with compensation for what the vendor is unable to convey. Where the error is inconsiderable, the vendor can enforce the contract on paying compensation for the deficiency: Dart, 7th ed., 680. It would seem that this condition, while it applies to great and small errors, so as to exclude the purchaser's right to specific performance with compensation in every case, does not enable a vendor to force upon a purchaser a property which he has substantially misdescribed: Dart, 7th ed., 681; *Jacobs* v. *Revell* [1900], 2 Ch. 858; 69 L. J. Ch. 879; Dissertation, pp. 47-48. This condition will not prevent the purchaser after completion from recovering damages under the vendor's covenants for title in any case to which such covenants are applicable: *Eastwood* v. *Ashton* [1915], A. C. 900; 84 L. J. Ch. 671. As to what circumstances entitle the purchaser to a decree for specific performance with compensation, see *Rutherford* v. *Acton Adams* [1915], A. C. 866; 84 L. J. P. C. 238.

Sale plans.

Sale plans and schedules are properly based on the ordnance survey, but as the survey is taken from the central stake in each fence, without regard to the ownership of the hedge or ditch, some slight discrepancies in acreage are bound to arise; generally the ordnance maps show a larger acreage than the old tithe maps.

Omission.

(*b*) See last note. Omission means an omission which affects the value of the property. An accidental omission to disclose a notice to pave, &c., the work not having been done, is not such an omission: *Re Leyland and Taylor* [1900], 2 Ch. 625; 69 L. J. Ch. 764.

The condition does not apply to a defect of title: *Debenham* v. *Sawbridge* [1901], 2 Ch. 98; 70 L. J. Ch. 525; *cf. Greenhalgh* v. *Brindley* [1901], 2 Ch. 324; 70 L. J. Ch. 740. As to how far the condition can be relied on to cover a

(2) Where an outgoing is not specified as estimated, an error which does not exceed £1 per annum shall not be the subject of compensation, but for an error greater than £1 per annum a compensation shall be allowed to Vendor or Purchaser, as the case may be, and the amount of compensation shall be settled by the auctioneers.

No. 154. THE provisions of clause 23 of the General Conditions of 1925 shall apply with respect to fire insurances.

Benefit of fire insurance.(c)

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material misdescription, see *Denny* v. *Hancock* (1870), L. R. 6 Ch. 1; 40 L. J. Ch. 193; *Brewer* v. *Brown* (1884), 28 Ch. D. 309; 54 L. J. Ch. 605; *Re Arnold* (1880), 14 Ch. D. 270 (where the condition was not enforced); and *Re Fawcett and Holmes* (1889), 42 Ch. D. 150; 58 L. J. Ch. 763; *Re Brewer and Hankins*, 1889, 80 L. T. 127 (where the condition was enforced); *Re Puckett and Smith* [1902], 2 Ch. 258; 71 L. J. Ch. 666 (distinguishing *Re Brewer and Hankins, supra*). Where a serious misdescription is verbally corrected by the auctioneer, a purchaser who does not hear him is not entitled to specific performance with compensation: *Re Hare and O'More* [1901], 1 Ch. 93; 70 L. J. Ch. 45.

Misdescription.

Misrepresentation.

The condition does not apply where there is a misrepresentation: *Dimmock* v. *Hallett* (1866), L. R. 2 Ch. 21; 36 L. J. Ch. 146; followed in *Whittemore* v. *W.* (1869), L. R. 8 Eq. 603; 38 L. J. Ch. 17.

Equitable right of rescission for misrepresentation.

There is no general rule that actual fraud is necessary to induce the court to rescind the contract: *Torrance* v. *Bolton* (1872), L. R. 8 Ch. 118; 42 L. J. Ch. 177; *Dougherty* v. *Oates*, 1900, 45 Sol. J. 119.

As to the purchaser's equitable right to rescind a contract, see *Holliday* v. *Lockwood* [1917], 2 Ch. 47; 86 L. J. Ch. 556.

Offer by trustees, &c., of compensation for misdescription.

This condition, when used by trustees or mortgagees, cannot be enforced against them to the injury of the beneficial owners where the misdescription arises from negligence: *White* v. *Cuddon* (1842), 8 Cl. & Fin. 766, 787. But its use is not depreciatory: *Hobson* v. *Bell* (1839), 2 Beav. 17, 24; 8 L. J. Ch. 241; and appears to be recognised in a proper case: see per the L.JJ. in *Dunn* v. *Flood* (1885), 28 Ch. D. 586; 54 L. J. Ch. 370.

Measure of compensation.

As to the measure of compensation, see *Re Chifferiel* (1888), 40 Ch. D. 45; 58 L. J. Ch. 263; *Tomlin* v. *Luce* (1889), 43 Ch. D. 191; 59 L. J. Ch. 164.

Open contract.

The jurisdiction to enforce specific performance, with compensation for defects, on a vendor in the case of an open contract arises from the doctrine that the vendor is estopped from saying that he has not the entirety after he has agreed to sell it: *Rudd* v. *Lascelles* [1900], 1 Ch. 815; 69 L. J. Ch. 396.

Compensation after conveyance.

When this condition is used, it is important to provide that the error be pointed out before completion, otherwise compensation may be allowed after conveyance (see *Palmer* v. *Johnson* (1884), 13 Q. B. D. 351; 53 L. J. Q. B. 348); but in the absence of any condition compensation will not be allowed after conveyance: *Allen* v. *Richardson* (1879), 13 Ch. D. 524; 49 L. J. Ch. 137 (which is not overruled by *Palmer* v. *Johnson, supra*: see *Clayton* v. *Leech* (1889), 41 Ch. D. 103); *Joliffe* v. *Baker* (1883), 11 Q. B. D. 255; 52 L. J. Q. B. 609; *Saunders* v. *Cockrill*, 1902, 87 L. T. 30; *Greswolde-Williams* v. *Barneby* [1901], 83 L. T. 708; but *cf. De Lassalle* v. *Guildford* [1901], 2 K. B. 215; 70 L. J. K. B. 533.

As to what constitutes a warranty, see *Heilbut Symons & Co.* v. *Buckleton* [1913], A. C. 30; 82 L. J. K. B. 245.

Fire insurances.

(c) S. 47 of the L. P. Act, 1925, applicable to sales and exchanges, takes the place of the usual condition respecting fire insurances. The consent of the

[*Or* THE provisions of section forty-seven of the Law of Property Act, 1925, respecting fire insurances, shall not apply to this present sale.]

No. 155.

Caveat to be entered under Yorkshire Registries Acts.

THE Vendor and all other necessary parties (if any) shall, if required by the Purchaser, at any time after the sale execute a caveat in favour of the Purchaser for the registry in the—— Riding Registry of Deeds under the Yorkshire Registries Acts of 1884 and 1885, to be in force until the expiration of one month from the day fixed for completion of the purchase, such caveat to be prepared and registered by and at the expense of the Purchaser, but to be perused and executed by the grantors thereof at the expense of the Vendor.(*d*)

SECTION VIII.

NOTE.—All the forms (except No. 158) in this section are applicable to registered land.

Sales by the Court.(*a*)

No. 156.

Payment into court for discharge of incumbrances (where there is an order for sale).

(1) The Vendor will, at the cost of any Purchaser requiring it, apply to the court in the said action for an order under section fifty of the Law of Property Act, 1925,(*b*) as respects any

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office to the transfer of the policy to the purchaser is still required. Where the policy is effected in the joint names of a lessor and lessee, and the lessee, who is selling, is under covenant to maintain the policy the section is not strictly required.

(*d*) It will generally be better, in place of a caveat, to register a land charge in respect of the "estate contract" under the L. C. Act, 1925, either at the land registry, or, as respects land within the jurisdiction of the Yorkshire local deeds registry, at that registry, but if the vendor's solicitors are well known such registration will seldom be resorted to.

Registration of "estate contracts."

In the case of registered land a caution (if required) is entered by and at the expense of the purchaser. The vendor's concurrence is not required, no condition is needed in regard to it.

(*a*) Many of the foregoing Forms, as well as some of the clauses in the General Conditions of 1925, may also be required on sales by the court: see Prec. II, General Conditions, *infra*.

(*b*) This section applies to ordinary sales and exchanges as well as to sales and exchanges by the court. It enables the vendor to make title free from incumbrances in cases where the concurrence of the incumbrancers cannot be obtained. Under the direction of the court a sufficient part of the purchase-money is paid into court to cover the incumbrances and costs, and the court then declares the land to be free from incumbrances and makes such order for conveyance or vesting as it thinks fit. The court may declare all other land, besides the land sold or exchanged, to be freed from the incumbrance, and can do this though a previous order has been confined to the land then sold or exchanged. There are other methods by means of which equitable interests

Payment into court to discharge incumbrances.

Other methods for overreaching equitable interests.

incumbrance which may not be bound by the order for sale to enable the property affected by any such incumbrance to be conveyed or vested in any Purchaser freed from any such incumbrance.

(2) A Purchaser shall not be entitled to require any such incumbrance to be discharged otherwise than under the provisions of the said section, nor make any objection on account of the non-production or delivery of any documents retained in the custody of the persons interested in any such incumbrance, nor require any covenant, acknowledgment or undertaking in respect of the same.

No. 157. As to application of money in discharge of incumbrances.

EACH Purchaser shall, notwithstanding incumbrances, pay the whole of his purchase-money into court, as provided by these conditions, to form a common fund to be applied under the direction of the court in payment of any existing incumbrances, and shall not, after having accepted the title, object [to the setting apart (out of the common fund) of money to answer the claim of incumbrancers having priority over the interests of the parties to the action, and not consenting to the sale, nor (*c*)] to payment out of the [balance of the] common fund of the amount due to any incumbrancer consenting to the sale, or otherwise bound by the order for sale.

No. 158. Sale in administration action; commencement of title. (*d*)

THE abstracts of title shall commence as follows, namely: As to Lot 1, with a Conveyance dated in the year ——; as to Lot 2, with a Conveyance dated in the year ——; and as to Lot 3, with a Conveyance dated in the year ——, each such Conveyance

created for money's worth can be overreached: L. P. Act, 1925, s. 2; S. L. Act, 1925, s. 21. In the case of settled land all capital money arising on a disposition must, after 1925, be paid to the trustees of the compound settlement, if there is one (*ib.*, s. 1 (1) proviso); it follows that, save in the case of legal mortgages or legal rentcharges, having priority to the settlement, there will be no need, where the land is settled, to pay money into court under L. P. Act, 1925, s. 50. If there are family charges within S. L. Act, 1925, s. 1 (1) (v), this creates a settlement and title must be made under that Act independently of s. 21 or L. P. Act, 1925, s. 2.

(*c*) The words in square brackets should be omitted where there are no prior incumbrancers whose claims are to be satisfied by setting apart a fund under L. P. Act, 1925, s. 50. Where there are such prior incumbrancers, the funds for them must be set apart first, otherwise there might not be sufficient to pay them, and the purchasers could not get their conveyances. It will be for the purchasers to see that there is a sufficient fund set apart under s. 50 to answer prior incumbrancers. If there is not, the sale of all the lots must fail, and the order for sale must be contingent on this.

(*d*) This form has no application to land registered with absolute or good leasehold title.

being made on a sale to the testator whose property is being administered in the action.(*e*)

No. 159.

Where abstract does not show equitable interests.

THE abstract to be delivered to a Purchaser will not include any documents or evidence relating to equitable interests shown on the Master's certificate of persons whose concurrence in conveying is not necessary [but an abstract of such documents and evidence will be furnished to any Purchaser who, within seven days after the certificate of the result of the sale has become binding, sends to the solicitors of the Vendor[s] a request for it in writing and pays them the cost of copying].(*f*)

No. 160.

Certificates, &c., in proceedings to be evidence. (*h*)

ALL facts or matters appearing to be proved or to be certified by the Master,(*g*) or to be stated in any judgment or order in the action [proceedings] in which this sale is made shall be deemed thereby sufficiently and conclusively evidenced, and the [a] Purchaser shall assume that all necessary and proper consents preliminary to a sale have been obtained, and shall not require the concurrence in his conveyance of any person beneficially interested whose interest is merely an equitable interest.(*i*)

(*e*) Form 158 has no application to land registered with an absolute or good leasehold title. For other forms for commencement of title, see Forms under the heading "As to the Commencement of Title," &c., *supra*.

Partition actions.

There will be no partition actions after 1925, but an action commenced before 1926 can be carried through: L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (11). To save costs an action can be stayed. The court can appoint trustees and vest the land in them on trust for sale: *ib.*, Trustees for sale can partition land between the persons interested in the proceeds of sale: L. P. Act, 1925, s. 28. If the trustees refuse to exercise their powers the court can make the requisite order: *ib.*, s. 30.

(*f*) In the case of registered land add after "equitable" the words "or minor," and in the case of absolute or good leasehold title omit the portion in square brackets.

(*g*) Where the sale is made under an order of a judge of the county courts, say "Registrar" instead of "Master."

(*h*) Office copies (see O. 61, r. 7) of all documents filed in the High Court are admitted as evidence: R. S. C., O. 37, r. 4.

Title obtained on sale by the court.

(*i*) It may sometimes be as well to insert these words as to consent, and as to the concurrence of persons beneficially interested, though they are not necessary having regard to L. P. Act, 1925, ss. 2 (1) (iv), 9, 204. Complete title is obtained by a conveyance of the legal estate and a good discharge for the purchase-money, which is obtained by payment into court: L. P. Act, 1925, s. 203 (1). All the equitable interests are usually intended to be bound by the order, but if this is not the case then the equitable interests, such as restrictive covenants, subject to which the conveyance or vesting order is to be made should be mentioned in the conditions of sale, see L. P. Act, 1925, s. 43. But it often happens that a purchaser asks for the concurrence in the conveyance of persons having equitable interests, and it is convenient to be able to point to a condition expressly excluding his right to require their concurrence.

What estates are bound.

An order of the court does not bind any estate or interest which it was not the intention of the court to bind; s. 204 makes no difference in this respect.

No. 161.
Reservations, how to be provided for.

WHERE a Lot is sold subject to or with a reservation of any right, effect shall (in case of difference) be given thereto, having regard to section sixty-five of the Law of Property Act, 1925, in such manner and at the expense of such persons as the Judge may direct.(*j*)

No. 162.
Sale subject to mortgage which cannot be immediately paid.

(1) The property is subject to a mortgage for securing payment of the sum of £—— and interest thereon, and after the sale notice will be given to the mortgagee of intention to pay off the mortgage debt.

(2) Notwithstanding the mortgage the Purchaser shall pay the whole purchase-money into court as provided by these conditions, and shall not, after having accepted the title, object to payment out of the money in court of the amount due under the mortgage, nor require the conveyance to him to be completed until the mortgage debt has been paid, unless the mortgagee is willing at any earlier time to concur in the conveyance.

(3) All principal money and interest secured by the mortgage shall be paid out of the fund in court.(*k*)

No. 163.
Provision for death duties.

IF it should appear that any death duties are unpaid, whether or not a land charge has been registered to protect the charge [*or in case of registered land* whether or not notice of the claim has been entered on the register under section seventy-three of the Land Registration Act, 1925], the Purchasers shall not require the same to be discharged, but such provision shall be made for payment thereof, either by adding to the account the words "subject to duty" or by setting aside a portion of the proceeds of sale, or otherwise as the Judge may direct, and the Purchasers shall be satisfied with the indemnity thereby afforded, and shall not make any objection or requisition on account of any such duty being unpaid.

Hence, if the order is for sale of property supposed to belong to A., but which really belongs to B., who is not a party, B. is not affected by the order: *Jones* v. *Barnett* [1899], 1 Ch. 611; [1900], 1 Ch. 370; 68 L. J. Ch. 244; 69 *ib.*, 242.

(*j*) The order of the judge settling the form of conveyance is subject to appeal: *Pollock* v. *Rabbits* (1882), 21 Ch. D. 466.

(*k*) Title cannot be made free from the mortgage term or charge by way of legal mortgage till either the debt is paid or the money is set aside under L. P. Act, 1925, s. 50, to discharge the incumbrance and an order is made under that section. But a legal estate in land can now be conveyed to a purchaser notwithstanding the existence of a legal mortgage for the security can only consist of a term or a legal charge. When the debt is paid the mortgage term, if any, will cease: *ib.*, s. 116.

No. 164.
As to setting apart money under s. 50 L. P. Act, 1925.(*l*)

A SUM is required to be set aside under section fifty of the Law of Property Act, 1925, so as to enable the property [Lots — and —] to be sold discharged from certain incumbrances, and the [a] Purchaser, having accepted the title and ascertained that the fund in court will be more than sufficient to discharge all such incumbrances, shall not object to the setting apart in court and carrying over to a proper account of the required amount, though his conveyance may not have been executed, nor on account of the non-production or delivery of any documents retained in the custody of the persons interested in any such incumbrances or require any covenant, acknowledgment or undertaking in respect of the same.

No. 165.
As to vesting orders or conveyances by person appointed to convey.

THE conveyance to the [each] Purchaser shall be made either by a vesting order or by a person appointed for the purpose by the court, who shall be required to give only the statutory covenant implied by reason of his being expressed to convey under the order of the court [and any vesting or other order required to enable a conveyance shall be obtained by the [each] Purchaser at his own expense].(*m*)

No. 166.
Where trustees or persons appointed, convey.

THE persons who will convey (being trustees or persons appointed for the purpose by the court) are not as regards any trustee or person appointed by the court to be required to give any covenant except the statutory covenant implied by reason of their being expressed to convey as trustees or under the order of the court.

(*l*) See also Form No. 156, *supra*, and notes thereto.

(*m*) Where there are several lots it will be best for the vendor to obtain one order applicable to all the lots. As to the effect of vesting orders, see L. P. Act, 1925, s. 9; T. Act, 1925, s. 49. For the powers to make vesting orders, see *ib.*, ss. 44-48, 50 (power to appoint a person to convey), 51 (stock and things in action), 52 (charity property), 53 (infants' beneficial interests), 54 (as respects lunatics), 55 (evidence), 56 (property abroad): L. P. Act, 1925, ss. 3 (5) (for giving effect to equitable interests), 30 (trustees &c. refusing to execute trusts or powers), 50 (on discharge of incumbrances), 90 (realisation of equitable charges), 91 (sale of mortgaged property), 181 (on dissolution of a corporation), 1st Sch., Pt. III (infants' interests, appointment of new trustees in place of public trustee), *ib.*, Pt. IV (undivided shares); S. L. Act, 1925, ss. 12 (vesting orders as to settled land), 16 (7) (for giving legal effect to interests paramount to a settlement), 113 (9) (jurisdiction); Ad. of E. Act, 1925, ss. 38 (for giving effect to rights otherwise than as against a purchaser) and 43 (to enforce rights against personal representatives); L. R. Act, 1925, s. 47 (as respects registered land).

Vesting orders, jurisdiction to make.

Section IX.

As to Registered Land.

Preliminary Note.

Special conditions applicable to registered land.

Where the title is not either absolute or good leasehold the conditions required in respect of unregistered land are applicable to any right or interest which is protected by L. R. Act, 1925, s. 20 (freeholds) or s. 23 (leaseholds); this is also true in regard to any right or interest which is (i) entered on the register (*a*) as an incumbrance (ii) an "overriding interest" (*b*) or (iii) protected (*c*) by a notice on the register (except death duty payable or leviable after 1925, which does not affect a purchaser, though noted on the register). Cautions, inhibitions and restrictions cannot be dealt with by conditions of sale; the vendor must either procure their removal or see that the necessary consent or other requirement is given or complied with at or before the completion. But a condition defining the procedure in these cases may be useful.

Contracts for sale of registered land are governed by L. R. Act, 1925, s. 110, under which abstracts are confined to interests appurtenant to the registered land where the register is not conclusive, and to matters excepted from the effect of registration. The vendor must, if required, furnish copies of the subsisting entries in the register and an authority to inspect it. Where the purchase money is under £1,000 the cost of copies, &c., is to be borne by the purchaser. The purchaser must be placed in a position to be able to register as proprietor. It is convenient when the sale relates only to registered land to use in the conditions of sale expressions (*e.g.*, "transfer" for

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(*a*) L. R. Act, 1925, s. 20 (freeholds), and s. 23 (leaseholds). The only incumbrances that can be treated by conditions of sale are those which were subsisting prior to the first registration of the land.

(*b*) The principal overriding interests are specified in s. 70 of L. R. Act, 1925, and r. 258 of the Land Registration Rules, 1925.

(*c*) L. R. Act, 1925, ss. 48 to 52 and 73 (1) and (16).

" conveyance," &c.) used in the L. R. Act, 1925, and to have regard to the definitions in s. 3 thereof, when these vary from those used in connexion with unregistered land, but this is not essential.

No. 167. Vendor furnishing abstract.(*d*)

THE Vendor will furnish at his own expense an authority to inspect the register and an abstract consisting of a copy of the entries in the register and of the filed plan (*or* an extract from the Land Registry general map) [*if there are any registered charges or documents referred to on the register add* and copies or abstracts of registered charges and other documents referred to on the register].

No. 168. Purchaser to pay for parts of abstract.(*d*)

THE Vendor will furnish at his own expense an authority to inspect the register and copies of the entries in the register and of the filed plan [*or* an extract from the Land Registry general map] and, if required and at the Purchaser's expense, copies or abstracts of registered charges and other documents referred to on the register.

No. 169. Variation (in Purchaser's favour) of L. R. Act, s. 110.

THE provisions of section one hundred and ten of the Land Registration Act, 1925, shall apply, except that [*add, on a sale by auction*] if the purchase-money [of any lot] exceeds £—— the Vendor will supply the requisite copies or abstracts [to the Purchaser of that Lot] free of expense to the [such] Purchaser. If the purchase-money [of any Lot] does not exceed £—— the Vendor will supply a copy of the entries in the register but not of any plan or document referred to thereon [to the Purchaser of that Lot] free of expense to such Purchaser.

No. 170. A simple case. No abstract.

THE Purchaser having inspected the Vendor's land certificate (which has been noted up to date) shall not require a copy of the entries in the register or of any plan or a copy or abstract of any document noted on the register to be furnished.(*e*)

No. 171. As to overriding interests.

THE Vendor is not aware of the existence of any overriding interests within the meaning of the Land Registration Act, 1925,

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(*d*) This condition is in excess of the purchaser's rights under L. R. Act, 1925, s. 110, which is very unfavourable to purchasers under £1,000—*i.e.*, to all but a very few.

(*e*) In a large number of cases this form (which, in a private contract, does not appear to be contrary to s. 110 of the Act), will be quite sufficient, coupled with the authority to inspect the register, which the purchaser is entitled to under the same section.

and Rules [other than those stated in the particulars] and he will, if desired, and at the Purchaser's expense, make a statutory declaration to that effect.

No. 172. Where land certificate deposited at registry.

THE Vendor's Land Certificate is deposited at the Registry for the completion of the Purchaser's registration [*add, where part only of the land is being sold*, and the Vendor shall not remove it till fourteen days after the completion of the purchase].

[*Or, where the certificate is deposited pursuant to s.* 65 *on the registration of a charge or mortgage or of a mortgage caution.* The Vendor's Land Certificate was deposited at the Registry on the registration of the Charge numbered 1 in the Charges Register [*or as the case may be*] and will not be re-issued or renewed until the discharge thereof. No objection shall be made on this account.]

No. 173. As to mode of completion

THE purchase shall be completed on the —— of —— next and the purchase-money shall be paid on the delivery to the Purchaser of an instrument of transfer of the land [*add, if any consent is required*, and the consent of any person whose consent is required by the register or by the Land Registration Act, 1925], and the Land [*or* Charge] Certificate.

No. 174. Free land certificate on completion.

THE Vendor will [if desired by any Purchaser] forthwith join with the [such] Purchaser in applying under Rule 138 for the provisional registration of the Purchaser as proprietor and for the issue of a Land Certificate made out in the name of the Purchaser [of the Lot purchased by him] and will, on the completion of the purchase, deliver the Land Certificate to the [such] Purchaser in lieu of an instrument of transfer free of expense to the Purchaser.

No 175. Form of joint application by Purchaser and Vendor under rule 138.

H.M. Land Registry: District —— Parish —— Property —— Title No. —— We, A. B., of, &c. (*Vendor*), and C. D., of, &c. (*Purchaser*), hereby jointly apply to the Registrar for the provisional registration of the said C. D. as proprietor of the land comprised in the accompanying instrument of transfer executed by the said A. B. as an escrow being [part of] the land comprised in the title above referred to (*to be signed by A. B. and C. D. and to be accompanied by the instrument of transfer, which will be in the usual form, adding in the attestation the words* "as an escrow" *after the word* "delivered").

No. 176.

Sale under mortgage prior to registration. Vendor not registered as proprietor thereof.(*f*)

THE title of the Mortgagor is registered under the Land Registration Act, 1925, and the mortgage is entered as an incumbrance prior to registration. The Purchaser shall not require the Vendors to be registered as proprietors of the land or of the incumbrance, or to obtain a transfer of the land from the registered proprietor, or to obtain rectification of the register, or to do any other act for the completion of the Purchaser's title than to execute a conveyance in the ordinary form without regard to the registration of the Mortgagor's title.

No. 177.

The same under a mortgage of leaseholds by sub-demise.

THE title of the Mortgagor to the principal term is registered, &c. [*as in No.* 176, *substituting* "principal term" *for* "land" *and* "an assignment" *for* "a conveyance"].

(*f*) This condition is not contrary to L. R. Act, 1925, s. 110, which is clearly intended to apply only to cases where the vendor's title is the subject-matter of the registration.

THE STATUTORY FORM OF CONDITIONS OF SALE, 1925, DATED AUGUST 7, 1925.

I, George Viscount Cave, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 46 of the Law of Property Act, 1925,(*a*) hereby prescribe and publish the form following and direct that it shall be available for any contract for the sale of land made on or after the 1st day of January, 1926.

Dated this 7th day of August, 1925.

Cave, C.

STATUTORY FORM OF CONDITIONS OF SALE.

NOTE.—*These conditions will apply to contracts for the sale of land by correspondence, subject to any modification or any stipulation or intention to the contrary expressed in the correspondence.*

They may also by express reference thereto be made to apply to any contract for the sale of land, and may for this or any other purpose be cited as the Statutory Form of Conditions of Sale, 1925.

Date fixed for completion.

1. The date for completion shall, unless otherwise agreed, be the first day after the expiration of seven weeks from the time when the contract is made, or if that day is a Sunday, Christmas Day, Good Friday or Bank Holiday, the next following working day.

Place for completion.

2. Completion shall take place at the office of the vendor's solicitors, or if the vendor so requires at the office of the solicitors of his mortgagees, if any.

Possession and apportionment of outgoings.

3.—(1) The purchaser paying his purchase money or, where a deposit is paid, the balance thereof, shall, as from the date fixed for completion (but subject to the execution of any conveyance which ought to be executed by him), be let into possession, or into receipt of rents and profits, and shall, as from that date, pay all outgoings, and up to that date all current rents, and all rates, taxes, and other outgoings shall (if necessary) be apportioned, and the balance shall be paid by or allowed to the purchaser on actual completion, and for this purpose the purchaser shall be liable to pay to the vendor a proportionate

(*a*) 15 G. 5, c. 20.

part of the current rents accrued in respect of the property up to the date fixed for completion :

Provided that all rates shall be apportioned, so far as practicable, according to the period for which they are intended to provide, and not as running from the dates when the same are made or allowed.

(2) Where as respects any rate the date fixed for completion falls between the expiration of the period for which the last rate was made and the making of a new rate, the new rate shall, for the purposes of this condition, be deemed to have been made at the same rate in the pound as that at which the last rate was made, and shall be calculated from day to day.

Interest on purchase money.

4.—(1) If from any cause whatever (save as hereinafter mentioned), the completion of the purchase is delayed beyond the date fixed for completion, the purchase money, or where a deposit is paid, the balance thereof, shall bear interest at the rate of £5 per cent. per annum, from the date fixed for the completion to the day of actual payment thereof.

(2) Provided that, if delay in completion arises from any other cause than the purchaser's own act or default the purchaser may—

(*a*) at his own risk, deposit the purchase money, or where a deposit is paid, the balance thereof, at any bank in England or Wales, in his own name or otherwise, and

(*b*) give notice in writing forthwith of such deposit to the vendor or his solicitors,

and in that case the vendor shall be bound to accept the interest, if any, allowed thereon, as from the date of such deposit, in lieu of the interest accruing after the date of the deposit, which would otherwise be payable to him under this condition.

(3) No interest shall become payable by the purchaser if delay in completion is attributable to—

(*a*) a refusal by the vendor to deduce title in accordance with the contract, or to give an authority to inspect the register kept under the Land Registration Act, 1925. or to convey; or

(*b*) any other wilful act or default of the vendor or his Settled Land Act trustees.

(4) The vendor shall, as from the date when interest becomes payable under this condition, have the option (to be exercised by notice in writing) of taking an apportioned part of the rents and profits, less apportioned outgoings, up to the date of actual

completion, in lieu of the interest otherwise payable under this condition; and, if the said option is exercised, the same payments, allowances and apportionments shall be made as if the date fixed for completion had been the date of actual completion.

The said option shall not be exercisable in any case in which sub-clause (2) of this clause applies.

Delivery of abstract.

5.—(1) The vendor shall deliver to the purchaser or his solicitor—

(*a*) an abstract of the title to the property sold, or

(*b*) in the case of land registered with an absolute or good leasehold title, the particulars and information which ought to be furnished in lieu of an abstract, with a written authority to inspect the register,

and, in either case, within fourteen days from the date when the contract was made.

(2) Where land is registered with a possessory or qualified title, the abstract (if any) shall only relate to estates, rights, and interests, subsisting or capable of taking effect prior to the date of first registration, or excluded from the effect of first registration, and dealings therewith, and subject as aforesaid, the foregoing provisions relating to absolute or good leasehold titles, shall apply.

Requisitions.

6.—(1) The purchaser shall within fourteen days after the actual delivery of the abstract, or of the said particulars and information, whether or not delivered within the time prescribed, send to the solicitors of the vendor a statement in writing of all the objections and requisitions (if any) to or on—

(*a*) the title or evidence of title,

(*b*) the abstract or the said particulars and information,

(*c*) the contract, as respects matters not thereby specifically provided for,

and subject thereto the title shall be deemed accepted.

(2) All objections and requisitions not included in any statement sent within the time aforesaid, and not going to the root of the title, shall be deemed waived.

(3) An abstract or the said particulars and information though in fact imperfect, shall be deemed perfect, except for the purpose of any objections or requisitions, which could not have been taken or made on the information therein contained.

(4) An answer to any objection or requisition shall be replied to, in writing, within seven days after delivery thereof and, if not so replied to, shall be considered satisfactory.

Power to rescind.

7.—(1) If the purchaser shall take or make any objection or requisition, which the vendor is unable to remove or comply with, and the purchaser shall not withdraw such objection or requisition within ten days after being required, in writing, so to do, the vendor may, by notice in writing delivered to the purchaser or his solicitor and notwithstanding any intermediate negotiations, rescind the contract.

(2) This condition does not apply so as to prevent the enforcement by a purchaser, of any right conferred on him, by section forty-two of the Law of Property Act, 1925.

(3) If the contract is so rescinded the vendor shall, within one week after default is made in complying with the requirement to withdraw the objection or requisition, repay to the purchaser his deposit money (if any), but without interest, and the purchaser shall return forthwith all abstracts and papers in his possession, belonging to the vendor, and shall not make any claim on the vendor for costs, compensation or otherwise.

Preparation of conveyance.

8.—(1) The conveyance or instrument of transfer to the purchaser, shall be prepared by him and at his own expense, and the draft thereof shall be delivered at the office of the solicitors of the vendor at least ten days before the date fixed for completion, for perusal and approval on behalf of the vendor and other necessary parties (if any).

(2) The engrossment of such conveyance or transfer, for execution by the vendor and other necessary parties (if any) shall be left at the said office within four days after the draft has been returned approved on behalf of the vendor and other necessary conveying parties (if any).

(3) Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition.

Power for vendor to re-sell after notice.

9.—(1) If the purchaser shall neglect or fail to perform his part of the contract the vendor may give to the purchaser or to his solicitor at least twenty-one days' notice in writing specifying the breach and requiring the purchaser to make good the default before the expiration of the notice.

(2) If the purchaser does not comply with the terms of the said notice—

(*a*) the deposit money, if any, shall, unless the court otherwise directs, be forfeited to the vendor, or, in the case of settled land, to his Settled Land Act trustees ;

(*b*) the vendor may resell the property without previously tendering a conveyance or instrument of transfer to the purchaser;

and the following provisions shall apply.

(3) Any resale may be made, by auction or private contract, at such time, subject to such conditions, and in such manner generally, as the vendor may think proper, and the defaulting purchaser shall have no right to any part of the purchase money thereby arising.

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The General Conditions of 1925.(*a*)

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Particulars and Conditions of Sale

of hold Property * to be sold by Auction at
on the day of 19 at o'clock.

*Strike out the reference to the auction on a sale by private treaty.

Particulars.(*b*)

Special Conditions of Sale.

1. The property is sold subject to the General Conditions of 1925 so far as they are not varied by or inconsistent with these conditions.

2. The Vendor's solicitors are Messrs. whose office is at

(*a*) These Conditions are printed under a licence from The Law Society. Notes thereon will be found in 2 Wolst. & Cherry, 11th ed., App. No. III, Pt. II.

(*b*) It is assumed that the particulars will state the land tax and tithe rent-charge, the leases, tenancies and easements, if any, affecting each lot; whether any and what rents are to be apportioned, or easements or rights are to be granted or reserved over any lot for the benefit of any other lot or for land retained, as well as exceptions of minerals and other rights. Also whether there are to be any valuations of fixtures, timber and other wood, or possession will be given before the date fixed for completion.

3. The date fixed for completion is the day of 19 (*c*).

4. The Vendor[s] is [are] selling (*d*) as

5. The abstract of title (*e*) shall commence

6. The tenure of the property [each lot] and the estate term or interest sold are as stated in the particulars and the property [Lot] is [are] sold subject (*f*) to

7. The [Each] Purchaser shall in his conveyance enter into the following (*g*) restrictive or other covenants, namely—

8. (*h*).

9.—(1) The property [Each lot] is believed to be and shall be taken as correctly described, and any incorrect statement, error or omission found in the particulars, sale plan, if any, or conditions shall not annul the sale, or entitle any purchaser to be discharged from his purchase, nor shall the Vendor or any Purchaser claim or be allowed any compensation in respect thereof.

(2) This condition shall take effect in substitution for Clause 35 of the General Conditions of 1925.

(*c*) If no deposit is to be paid add here—"No deposit money shall be paid." If the requisitions are not to be delivered within fourteen days, add here—'The time for delivery of requisitions shall be —— days instead of 14 days." If interest is not to be at £5 per cent., add here—"After the date fixed for completion the purchase money or the balance thereof shall bear interest at —— per cent."

(*d*) State whether the Vendors are selling as absolute owners, tenants for life, statutory owners, trustees for sale, personal representatives. If an absolute owner subject to equitable interests, which will be overreached, is selling, state this, see Condition 25 (3).

(*e*) Where an absolute or good leasehold title is registered state this instead of fixing a commencement. Where a possessory or qualified title is registered, see Condition 8.

(*f*) Refer to any subsisting restrictive covenants, legal mortgages, rentcharges, easements, local land charges and other burdens not mentioned in the particulars, which cannot be overreached.

(*g*) State these, if any. Also set out any easements or rights to be granted or reserved if not clearly stated in the particulars.

(*h*) In Clause 8 state whether the property is to be conveyed exonerated or discharged from a legal rentcharge or other legal liability or is to bear an apportioned part. Also whether a form of conveyance will be supplied from which the draft can be prepared and the fee to be charged therefor. Throughout the Special Conditions the inappropriate words or clauses should be struck out. The Special Conditions should be completed by a qualified person who is cognisant of the Vendor's title.

THE GENERAL CONDITIONS OF 1925.

Arrangement of Clauses.

Conditions which may be incorporated in any Contract for Sale of Land, whether the Sale is made by Public Auction, or Private Treaty, but only by express reference thereto.

As to the Auction (if any).

Clause

1. Biddings and reserved rights.
2. Regulation of biddings and disputes.

As to the Sale, Deposit, &c.

3. Valuation of timber or fixtures.
4. Deposit and signature of contract.
5. Completion, possession and apportionment.
6. Where possession is to be given before completion.
7. Interest on purchase money.
8. Delivery of abstract.

As to Requisitions and Power to Rescind.

9. Requisitions.
10. Power to rescind.
11. Effect of rescission.

Commencement of Title, and matters arising on the Title.

12. Freeholds commencing with a will or probate.
13. Rentcharges and land subject to rentcharges.
14. Enfranchised land.
15. Leaseholds, including leaseholds formerly renewable and leaseholds formerly held for lives.
16. Registration of memorials.
17. Building and Friendly Society mortgages.

Identity and Matters arising on the Particulars.

18. Identity and boundaries.
19. Easements, quit rents, &c.
20. Land tax and tithe rentcharge.
21. Local land charges.
22. Tenancies and apportionment of rents for purposes of the sale.
23. Fire insurance.

MATTERS RELATING TO THE CONVEYANCE AND THE DISCHARGE OF INCUMBRANCES.

24. Preparation of conveyance.
25. Settled land.
26. Covenants for title.
27. Property subject to rents.
28. Discharge of, or indemnity against, incumbrances.
29. Sales by mortgagees.
30. Reservations.
31. Sales subject to existing covenants.
32. The imposition of restrictive or other covenants
33. Duplicates and counterparts.
34. Documents.

MISDESCRIPTION, COMPENSATION, AND POWER TO RE-SELL.

35. Misdescription and compensation.
36. Power for Vendor to re-sell AFTER NOTICE.

DEFINITIONS AND APPLICATION.

37. Interpretation.
38. Short title and application.

CONDITIONS WHICH MAY BE INCORPORATED IN ANY CONTRACT FOR SALE OF LAND, WHETHER THE SALE IS MADE BY PUBLIC AUCTION, OR PRIVATE TREATY, BUT ONLY BY EXPRESS REFERENCE THERETO.

AS TO THE AUCTION (IF ANY).

Biddings and reserved rights.

1.—In a sale by auction—

(1) The highest bidder shall be the purchaser.

(2) The vendor reserves the following rights—

(*a*) to fix a reserve price for the property, and, for each lot where the property is sold in lots ;

(*b*) to bid up to any reserve price, by himself or his agent ;

(*c*) where the property is sold in lots, to re-arrange or consolidate any lots ;

(*d*) without disclosing any reserve price, and whether or not the sale has commenced, to withdraw from the sale, any property or lot, not actually sold at the auction.

Regulation of biddings and disputes.

2.—In a sale by auction—

(1) No person shall—

(*a*) on each bidding, advance less than the sum to be fixed by the auctioneer, who shall have power to refuse any bid,

(*b*) retract a bidding.

(2) If any dispute shall arise as to any bidding, the property or lot in dispute shall either be put up again at the last undisputed bidding, or the auctioneer may determine the dispute.

As to the Sale, Deposit, &c.

Valuation of timber or fixtures.

3.—(1) A purchaser shall, if the contract so requires, in addition to his other purchase-money, pay for—

(*a*) the fixtures and fittings referred to in the contract,

(*b*) all timber and timberlike trees, tellers, pollards, saplings and plantations (if any), down to 1s. per stick inclusive, and underwood, down to the stem,

according to a valuation.

(2) The valuation shall be made in manner following—

(i) Each party (the vendor and purchaser), or their respective solicitors, shall, within twenty-one days after the sale, appoint by writing a valuer, and give notice in writing to the other party of the name and address of the valuer appointed by him:

(ii) The two persons so appointed shall make the valuation, but, before they commence their duties, they shall, in writing, appoint an umpire:

(iii) The decision of the two valuers, if they agree, or of their umpire, if they disagree, shall be final:

(iv) Each party shall pay a moiety of the costs of valuation:

(v) If either party shall neglect or refuse—

(*a*) to appoint a valuer,

(*b*) to give notice of the appointment,

in the manner and within the time aforesaid, the valuer (if any) appointed by the other party shall make the valuation, and his valuation shall be final.

(3) Where the contract fixes the amount to be paid for the fixtures and fittings, or timber and other wood, the amount so fixed shall be treated as the amount of the valuation.

(4) Where, under the contract, a separate valuation is to be made, but no valid valuation is made under the foregoing provisions, the property to be valued shall be taken by the purchaser

at its fair value, and each party shall pay a moiety of the costs of ascertaining such value. In case of dispute the fair value shall be settled by a sole arbitrator agreed by the parties, but if the parties do not agree by a sole arbitrator nominated by the President or other principal officer for the time being of the local law society, or, where there is no local law society in the district wherein the land is situated, by the President for the time being of The Law Society, and the provisions of the Arbitration Act, 1889, shall apply accordingly.

(5) In these conditions "purchase-money" includes the amount of the bidding of a purchaser, and "purchase-money," where there is no deposit, or "balance of the purchase-money," where there is a deposit, includes the amount of the valuation, if any, except for the purposes of the deposit.

Deposit and signature of contract.

4.—(1) A purchaser, at the close of the sale to him, shall, unless the contract otherwise provides, pay a deposit of £10 per cent. on the amount of the purchase-money (not including any valuation money), and sign an agreement in the form subjoined to these conditions for the completion of his purchase, according to these conditions, but subject to the variations, if any, contained in the contract.

(2) The deposit shall be paid—

(*a*) in a sale by auction, to the vendor's solicitors, unless by local custom it is payable to the auctioneers,

(*b*) in a sale by private treaty, to the vendor's solicitors.

(3) The said solicitors or auctioneers shall take and give a receipt for the deposit—

(i) where the vendor is in a fiduciary position as agents—

(*a*) for the vendor and his mortgagees, if any, save where the property is settled land,

(*b*) for the Settled Land Act trustees of the vendor where the property is settled land;

(ii) in other cases as stakeholders.

Completion, possession and apportionment.

5.—(1) A purchaser shall pay his purchase-money, or, where a deposit is paid, the balance of his purchase-money, on the date fixed for completion by the contract, or, if no date is so fixed, on the first day after the expiration of seven weeks from the date of the contract (or if that day is a Sunday, Christmas Day, Good Friday or Bank Holiday, on the next following working day), which date so fixed, or the first day aforesaid, or the said first following working day, is, in these conditions, referred to as the date fixed for completion.

(2) Completion shall take place at the office of the vendor's solicitors mentioned in the contract, or, if so required by the vendor, at the office of the solicitors of his mortgagees (if any). If there are no such solicitors, then at such place in England or Wales as the vendor may notify, in writing, to the purchaser within ten days after the date of the contract.

(3) A purchaser paying his purchase-money, or, where a deposit is paid, the balance thereof, shall (but subject to the execution of any conveyance which ought to be executed by him), as from the date fixed for completion, be let into possession or receipt of rents and profits.

A purchaser shall, as from that date, pay all outgoings, and up to that date all current rents, and all rates, taxes, and other outgoings, shall, if necessary, be apportioned, and the balance shall be paid by or allowed to a purchaser on actual completion; and for this purpose a purchaser shall be liable to pay a proportionate part of the current rents accrued in respect of the property up to the date fixed for completion:

Provided that all rates shall be apportioned, so far as practicable, according to the period for which they are intended to provide, and not as running from the date when the same are made or allowed.

(4) Where, as respects any rate, the date fixed for completion falls between the expiration of the period for which the last rate was made and the making of a new rate, the new rate shall, for the purposes of this condition, be deemed to have been made at the same rate in the pound as that at which the last rate was made, and shall be calculated from day to day.

Where possession is to be given before completion.

6.—Where, under the contract, a purchaser is authorised to take possession of the property before the actual completion of a purchase, then, subject to any stipulation to the contrary in the contract, the following provisions shall apply:—

(1) The taking of possession shall not be deemed to be—

(*a*) an acceptance by the purchaser of the vendor's title,

(*b*) a waiver of the right of the purchaser to make requisitions or objections on or to the title.

(2) A purchaser who takes possession shall, from the date of taking possession, and until the time of actual completion, or until the vendor resumes possession by reason of the rescission of the contract—

(*a*) keep the property in as good a state of repair and condition as it was at the time of taking possession,

(*b*) pay all rents, rates, taxes, costs of insurance and of repairs, and other outgoings in respect of the property, but receiving credit for interest paid on any mortgage debt to be discharged out of the purchase-money,

(*c*) be entitled to receive the rents and profits as if the date fixed for completion had arrived,

(*d*) pay interest on the purchase-money or the balance thereof in like manner as if the date fixed for completion had arrived, receiving credit as aforesaid.

(3) If the sale is rescinded, the purchaser shall—

(*a*) forthwith deliver up possession of the property to the vendor, in as good a state of repair and condition as aforesaid,

(*b*) apply any insurance money received by him in respect of the property, in making good any loss or damage to the property, or otherwise account for same to the vendor.

(4) Provided that (subject to the requisite apportionment being made of all rents, rates, taxes, costs of insurance and of repairs, and other outgoings) the vendor shall repay to a purchaser whose contract is rescinded, his deposit money, if any (including any purchase-money previously paid), but without interest thereon, and such purchaser shall return forthwith all abstracts and papers in his possession belonging to the vendor, and shall not make any claim on the vendor for costs, compensation or otherwise.

Interest on purchase money.

7.—(1) If from any cause whatever (save as hereinafter mentioned) the completion of the purchase is delayed beyond the date fixed for completion, the purchase-money, or where a deposit is paid, the balance thereof, shall bear interest at the rate fixed by the contract, or, where no such rate is fixed, at the rate of £5 per cent. per annum, and, in either case, from the date fixed for completion to the day of actual payment thereof.

(2) Provided that, if delay in completion arises from any other cause than the purchaser's own act or default, the purchaser may—

(*a*) at his own risk, deposit the purchase-money, or where a deposit is paid, the balance thereof, at any bank in England or Wales and

(*b*) give notice, in writing, forthwith of such deposit, to the vendor or his solicitors,

and in that case the vendor shall be bound to accept the interest, if any, allowed thereon, as from the date of such deposit, in lieu of the interest accruing after the date of the deposit, which would otherwise be payable to him under this condition.

(3) No interest shall become payable by a purchaser if delay in completion is attributable to—

(*a*) a refusal by the vendor to deduce title in accordance with the contract, or to give an authority to inspect the register kept under the Land Registration Act, 1925, or to convey ; or

(*b*) any other wilful act or default of the vendor or his Settled Land Act trustees.

(4) The vendor shall, as from the date when interest becomes payable under this condition, have the option (to be exercised by notice in writing) of taking an apportioned part of the rents and profits, less apportioned outgoings, up to the date of actual completion, in lieu of the interest otherwise payable under this condition ; and, if the said option is exercised, the same payments allowances and apportionments shall be made as if the date fixed for completion had been the date of actual completion.

The said option shall not be exercisable in any case in which sub-clause (2) of this clause applies.

Delivery of abstract.

8.—(1) The vendor shall deliver to the purchaser or his solicitor—

(*a*) an abstract of the title to the property sold, or

(*b*) in the case of land registered with an absolute or good leasehold title, the particulars and information to be furnished in lieu of an abstract, with a written authority to inspect the register,

and, in either case, within fourteen days from the date of the contract, unless the contract otherwise provides.

(2) Where land is registered with a possessory or qualified title, the abstract, if any, shall only relate to estates, rights, and interests subsisting or capable of taking effect prior to the date of first registration, or excluded from the effect of first registration, and dealings therewith, and subject as aforesaid, the foregoing provisions relating to absolute or good leasehold titles shall apply.

As to Requisitions and Power to Rescind.

Requisitions.

9.—(1) A purchaser shall, within the time stated in the contract, or, if no time is therein stated, within fourteen days from the actual delivery of the abstract or the said particulars and information, whether or not the abstract or particulars and information are delivered within the time prescribed, send to the solicitors of the vendor, a statement in writing of all the objections and requisitions, if any, to or on—

(*a*) the title or evidence of title,

(*b*) the abstract or the said particulars and information,

(*c*) the contract, as respects matters not thereby specifically provided for,

and subject thereto, the title shall be deemed to be accepted.

(2) All objections and requisitions, not included in any statement sent within the time aforesaid and not going to the root of the title, shall be deemed to have been waived.

(3) The abstract, or the said particulars and information, though in fact imperfect, shall be deemed perfect, except for the purpose of any further objections or requisitions, which could not have been taken or made on the information therein contained.

(4) An answer to any objection or requisition, shall be replied to, in writing, within the time stated in the contract, or, if no time is therein stated, within seven days after the delivery thereof, and if not so replied to, shall be considered satisfactory.

(5) Time shall be deemed, in all respects, of the essence of this condition.

Power to rescind.

10.—(1) If—

(*a*) a purchaser shall take or make any objection or requisition, which the vendor is unable, or, on the ground of unreasonable expense, is unwilling to remove or comply with, or

(*b*) any question shall arise as to the form of the conveyance, and

(*c*) the purchaser shall not withdraw such objection or requisition, or waive the question, within ten days after being required, in writing, so to do,

the vendor may (subject as hereinafter provided), by notice, in writing, delivered to the purchaser or his solicitors, and notwithstanding any intermediate negotiation or litigation, rescind the contract.

(2) This condition does not apply so as to prevent the enforcement by a purchaser of any right conferred on him by section forty-two of the Law of Property Act, 1925, nor so as to enable the vendor to refuse to complete, notwithstanding that notice of rescission has been served, if an engrossment of a conveyance, containing such provisions, and being in such a form generally, as, having regard to the contract, the court would consider to be proper, has been tendered to him for execution, either before, or within one week after, the service of the notice of rescission.

Effect of rescission.

11.—If the contract is so rescinded the vendor shall, within one week after default is made in complying with the requirement to withdraw the objection or requisition or waive the question, repay to the purchaser his deposit money, if any, but without interest, and the purchaser shall return, forthwith, all abstracts and papers in his possession, belonging to the vendor, and shall not (save in regard to costs of litigation at the discretion of the court) make any claim on the vendor for costs, compensation or otherwise.

Commencement of Title and matters arising on the Title.

Freeholds commencing with a will, probate or administration.

12.—(1) Where the property is freehold, and the contract provides that title shall commence with a will, probate or letters of administration to the estate of a person who died not less than twelve years before the date of the contract, a purchaser shall assume, unless the contrary appears, that such person was seised of the property at his death, for an estate in fee simple, in possession, free from incumbrances, and no evidence on this point shall be required.

(2) In other cases where the title is to commence with a will, probate or letters of administration, a purchaser shall be entitled to be furnished, at his own expense, if he so requires, with a statutory declaration to prove the said seisin free from incumbrances.

Rentcharges and land subject to rentcharges.

13.—(1) Where the property is a perpetual or terminable rentcharge, granted or reserved, by an instrument creating the same—

(*a*) the abstract of title shall, unless the contract otherwise provides, commence with that instrument;

(*b*) if that instrument is dated more than thirty years before the date of the contract, the title shall be taken up again as provided by the contract, or, if no such provision is

made, with a conveyance or other disposition made not less than thirty years before such date ;

and a purchaser shall not be entitled to investigate, or inquire into, the intermediate title.

(2) Where the property is freehold and is sold subject to a perpetual or terminable rent-charge—

(*a*) the abstract shall, unless the contract otherwise provides, include the instrument, if any, creating the rentcharge, provided that the vendor has sufficient information of the contents thereof ;

(*b*) on production of the receipt for the last payment due for the rentcharge before the date of the actual completion of the purchase, a purchaser shall assume, unless the contrary appears, that all the covenants and provisions of the instrument creating the rentcharge have been duly performed and observed up to the date of actual completion of the purchase, or that all breaches, if any, of such covenants and provisions have been effectually waived up to that date ;

(*c*) no evidence, besides the evidence, if any, in the possession or control of the vendor or his trustee or mortgagee, shall be required of the title or authority of the person giving such receipt.

(3) Unless the contract otherwise provides, the instrument creating the rentcharge sold, or of the instrument imposing the rentcharge on the land sold (as the case may be) or an abstract or copy thereof—

(*a*) in a sale by private treaty, may be inspected by the purchaser, and if so required by him shall be produced at the office of the vendor's solicitors, before the contract is signed ;

(*b*) in a sale by auction, may be inspected, during office hours, at the office of the vendor's solicitors, for a period of seven days preceding the sale, and in the sale room at the time of sale.

A purchaser, whether or not he inspects the said instrument, shall be deemed to have notice of all the contents thereof, and such notice shall not be affected by any partial or incomplete statement in the contract.

(4) Where the property is freehold, and is sold subject to a perpetual or terminable rentcharge, and is also affected by an overriding rentcharge which affects other property, but is not,

in fact, paid by or on behalf of the vendor, then if the overriding rentcharge is referred to in the contract, as affecting the property, the following provisions shall apply :—

(i) No objection shall be made on account of the overriding rentcharge, or of any covenants, conditions, or other provisions of a usual nature contained in the instrument, if any, creating the overriding rentcharge or of any powers or remedies of a usual nature for enforcing the said covenants and conditions, or compelling payment of that rentcharge ;

(ii) Unless the contract otherwise provides, no further indemnity against the overriding rentcharge, or the breach of any of the said covenants and conditions, shall be required, besides the protection, if any, provided by law, and the assignment of the benefit of the indemnity, if any, to which the vendor may be entitled ;

(iii) A purchaser shall assume, unless the contrary appears, that—

(*a*) the overriding rentcharge has been paid,

(*b*) the said covenants and conditions have been performed and observed, or that all breaches thereof have been effectually waived,

in every case up to the date of the actual completion of the purchase ;

(iv) Save as hereinafter provided, a purchaser shall not require the overriding rent to be apportioned.

(5) Where the sale is made subject to a rent, or a part of a rent, then if the vendor has under section one hundred and ninety-one of the Law of Property Act, 1925, or under sub-section (3) of section one hundred and thirty-nine of the Law of Property Act, 1922, a power to redeem the rent, or to require the same to be apportioned and redeemed, he shall at the cost in all respects of a purchaser, if so required in writing, take the necessary steps to redeem the rent, or to require the same to be apportioned and redeemed, and no objection shall be taken on account of any consequential and unavoidable delay in completion.

Enfranchised land.

14.—Where the property is enfranchised land, the following provisions shall apply :—

(1) Where the abstract of title to the freehold interest commences with an enfranchisement award, no objection shall be made on account of the award not containing a

release of the mines, minerals, and other rights reserved to the lord by the Copyhold Acts, and the sale shall be made subject to those rights.

(2) Where the abstract of title to the freehold interest commences with an enfranchisement deed, no objection shall be made, because that deed did not contain a re-grant of commonable rights.

(3) Where the enfranchisement is effected by the Law of Property Act, 1922, as amended, then notwithstanding that the sale is expressed to be made free from manorial incidents, no objection shall be made by reason of the existence of the rights reserved to the lord by that Act, unless the contract states that those rights have been acquired or released.

(4) Where the sale is expressed to be made free from manorial incidents which have been extinguished—

(*a*) if the land was formerly copyhold, the title to the freehold interest,

(*b*) if the land was formerly freehold subject to manorial incidents, the title required to show that the incidents have been extinguished,

shall in either case, unless the contract otherwise provides, commence with the compensation agreement, or the notice requiring the ascertainment of the compensation, as the case may require:

Provided that, if the extinguishment is effected by reason of the expiration of the period of ten years from the commencement of that Act, or other extended period applicable to the manor of which the land is parcel, a receipt for the compensation money, or other sufficient evidence that the same has been discharged, or that no compensation is payable, shall be furnished by and at the expense of the vendor, unless the contract provides—

(*a*) that the purchaser shall pay the compensation, or

(*b*) that the purchaser shall take subject to a compensation rentcharge.

(5) Where the sale is made subject to manorial incidents, the vendor shall, if a purchaser so requires, but at the expense in all respects of the purchaser, arrange either by means of a compensation agreement, or by notice, to extinguish the manorial incidents before completion, but no objection shall be made by the purchaser, on

account of completion being unavoidably delayed, to enable the incidents to be extinguished.

(6) As regards the title to the former copyhold or customary interest, which may be material to show the title to acquire the freehold interest under an enfranchisement, or to acquire enfranchised land under the Twelfth Schedule to the Law of Property Act, 1922, as amended, and the First Schedule to the Law of Property Act, 1925, or the Second Schedule to the Settled Land Act, 1925—

(*a*) where the abstract of title thereto commences with a will of a testator, who died not less than twelve years before the date of the contract, a purchaser shall assume, unless the contrary appears, that the testator had been admitted, and was at his death beneficially seised for a customary estate of inheritance, free from incumbrances, and no evidence on this point shall be required, but in other cases where the title is to commence with a will a purchaser shall be entitled, at his own expense, to be furnished, if he so requires, with a statutory declaration to prove the said seisin free from incumbrances;

(*b*) a purchaser shall assume that every surrender, admittance, or other customary assurance, expressed to be effected pursuant to a power of attorney, was authorised by the power under which it appears, from the court rolls, to have been made; and, unless the power is in the possession of the vendor or his trustee or mortgagee, production thereof shall not be required.

Leaseholds, including leaseholds formerly renewable and leaseholds formerly held for lives.

15.—Where the property is leasehold, the following provisions shall apply:—

(1) The abstract of title shall, unless the contract otherwise provides, commence with the lease or underlease creating the term or interest sold, but, in the case of an underlease, and without prejudice to sub-section (3) of section forty-four of the Law of Property Act, 1925, a purchaser shall be entitled to require an abstract or copy of the superior lease to be furnished.

(2) Unless the contract otherwise provides, such lease or underlease, or an abstract or copy thereof—

(*a*) in a sale by private treaty, may be inspected by a purchaser, and if so required by him shall be produced at the office of the vendor's solicitors, before the contract is signed;

(*b*) in a sale by auction, may be inspected, during office hours, at the office of the vendor's solicitors, for a period of seven days preceding the sale, and in the sale room at the time of sale.

A purchaser, whether or not he actually inspects the lease or underlease, or an abstract or copy thereof, shall be deemed to have notice of all the contents thereof, and such notice shall not be affected by any partial or incomplete statement in the contract.

(3) Where an underlease is sold, no objection shall be made on the ground that the covenants and conditions in the underlease do not in all respects correspond with those in the superior lease, provided that the provisions of the underlease substantially give effect to the provisions of the superior lease.

(4) Where an underlease includes the whole of the property comprised in the superior lease, a description of such an underlease, in the contract, as a lease, shall not annul the sale, but a purchaser may, if he thinks fit, claim compensation under these conditions.

(5) If the lease or underlease is dated more than thirty years before the date of the contract, the title shall be taken up again as provided by the contract, or, if no such provision is made, with an assignment or other disposition made not less than thirty years before such date; and a purchaser shall not be entitled to investigate or inquire into the intermediate title.

(6) Where the lease or underlease is granted without reserving a rent or at a nominal rent, the fact of possession thereunder, at the date of completion shall, unless the contrary appears, be accepted as sufficient evidence of the due performance or observance of the lessee's covenants and conditions therein contained.

(7) No evidence, besides the evidence, if any, in the possession or control of the vendor or his trustee or mortgagee, shall be required of the title or authority of the person giving the receipts for rent respectively referred to in sub-sections (2) and (3) of section forty-five of the Law of Property Act, 1925.

(8) Where the lease or underlease, which is sold, is subject to a restriction against assignment without licence—

(*a*) the vendor shall, immediately after the date of the contract, at his own cost, apply for and endeavour to obtain the necessary licence;

(*b*) the purchaser shall perform any reasonable condition, required by the reversioner, to show that the purchaser will be a satisfactory tenant, before granting the licence.

If the vendor is unable to obtain the licence within three months from the date of the contract, either the vendor or purchaser may rescind the contract in the same manner and upon the same terms as if—

(*a*) the purchaser had made, and insisted on, a requisition which the vendor is unable to comply with,

(*b*) the purchaser had, in that case, also been given a power to rescind.

(9) Where the property is comprised in a lease or underlease which was formerly perpetually renewable, and was affected by the Fifteenth Schedule to the Law of Property Act, 1922, the contract shall extend to the long term or sub-term created by that Schedule, and no objection shall be taken on account of the powers and covenants implied, or the additional rent (remaining uncommuted) made payable, by that Schedule, as amended.

(10) Where the property is comprised in a lease or underlease which was formerly terminable with life or on marriage, and was affected by section one hundred and forty-nine of the Law of Property Act, 1925, the contract shall extend to the term of ninety years determinable, created by that section, and no objection shall be taken on the ground that the statutory provisions affecting the lease or underlease are not referred to in the contract.

Registration of memorials.

16.—(1) Save as hereinafter provided, no objection shall be made on account of a memorial of a document dated more than twelve years before the date of the contract, not being registered in a local deeds registry; and any such document which a purchaser requires to be so registered, shall be registered by him or at his expense.

(2) This condition shall not apply to a puisne mortgage (within the meaning of the Land Charges Act, 1925, whether made before or after the commencement of that Act) under which title is being made, which is not registered as a land charge.

Building and Friendly Society mortgages.

17.—Where a receipt for money, formerly secured by a mortgage to trustees of a Building or Friendly Society, or of a society registered under the Industrial and Provident Societies Acts, is endorsed on the mortgage, and purports to be signed by the trustees of the Society or other persons authorised by the rules of the Society, with or without any requisite counter signature of the secretary, a purchaser shall, unless the contrary appears, assume that it was signed by the then duly constituted trustees of the Society or other persons authorised as aforesaid and the secretary where his signature is requisite, and shall not make any objection or inquiry as to the appointment of the trustees, secretary or other persons aforesaid.

IDENTITY AND MATTERS ARISING ON THE PARTICULARS.

Identity and boundaries.

18.—(1) No objection shall be made on account of any discrepancy between old and present measurements in regard to which a reasonable explanation is furnished by the vendor.

(2) A purchaser shall be entitled to be furnished—

(*a*) with such evidence of identity, if any, as may be gathered from the descriptions in the documents abstracted, or in the register, filed plan, or general map at the land registry, and

(*b*) unless the land is registered with an absolute or good leasehold title, or the contract otherwise provides, with a statutory declaration that the property has for twelve years and upwards preceding the date of the contract, or from the date fixed for commencement of the title (whichever period is the shorter), been held and enjoyed in accordance with the title shown thereto; but such declaration shall be prepared and stamped by and at the expense of the purchaser requiring it.

Save as aforesaid and without prejudice to the right of a purchaser to be furnished with a plan of the property, no further or other evidence shall be required as to the identity of the property described in the contract, with the property to which title is shown by the abstract or registered title.

(3) Provided that the general boundaries can be sufficiently indicated, the vendor shall not, as respects the exact boundaries, be required to distinguish between—

(*a*) the parts of the property held under different titles,

(*b*) freehold land, enfranchised land, and leasehold land, where any such lands are adjoining or intermixed,

(*c*) lands parcel or formerly parcel of different manors.

(4) Where the property consists of or includes a manor or lordship, or reputed manor or lordship, the vendor shall not, save to the extent of the information in his possession, be bound to show the boundaries thereof, or to state the rights or incidents belonging thereto.

Easements, quit rents, &c.

19.—(1) The property is (unless otherwise stated in the contract) sold and, except where the title is registered, will, if the vendor so requires and defines the liability, be conveyed, subject to all quit, chief, and other rents (being incidents of tenure) remaining unextinguished, rights of way, water, light, drainage, and other easements, rights and privileges, if any, affecting the same, and to any subsisting liability to repair party walls, fences, roads or streets :

Provided that nothing in this condition shall discharge the vendor from the obligation to disclose, on or before the date of the sale, the existence of all latent easements, rights, privileges or other liabilities which are known by him to affect the property.

(2) No inquiry shall be made as to the origin or creation of any quit, fee farm, or chief rent (being an incident of tenure) subject to which the property is sold.

(3) Where a receipt for any such rent is produced, no evidence, besides that in the possession or control of the vendor or his trustee or mortgagee, of the title to give such receipt shall be required.

Land tax and tithe rentcharge.

20.—(1) The property is (unless otherwise stated in the contract) sold subject to all land tax or tithe rentcharge (if any) affecting the same.

The Vendor shall not be required to obtain any apportionment thereof, and the receipts for the last amounts due in respect of the same, shall be sufficient evidence of the amounts.

(2) Where in the contract it is stated that any tithe rentcharge or land tax is apportioned for the purposes of the sale, a purchaser shall accept such apportionment, and be liable to keep indemnified the other property affected from the apportioned amount, and the vendor or the persons deriving title under him, being the owners of the other property, shall be liable to keep indemnified the property sold from the remainder of such tithe rentcharge or land tax until legal apportionment is effected.

(3) Where the property is stated in the contract to be free from land tax or tithe rentcharge, such freedom shall be deemed to be sufficiently evidenced, if the land tax assessment books, or the tithe commutation award (if any), as the case may be, do not show any land tax or tithe rentcharge to be payable, or by the absence of any such books or award ; but a purchaser shall be furnished at his own expense, if he so requires, with a statutory declaration, that no land tax or tithe rentcharge (as the case may be), has been paid for twelve years and upwards next before the date of the contract, or for the period to which the abstract relates, whichever is the shorter.

(4) This condition shall apply to any terminable redemption annuity, payable in lieu of tithe rentcharge, in like manner as it applies to tithe rentcharge.

Local land charges.

21.—(1) Where before the completion of the purchase—

(*a*) The vendor has expended money in complying with requirements enforceable against him in respect of the property, notice whereof was given after the date of the contract by the county council, municipal corporation, or other local authority of the county, borough or district within which the property is situated, whether as to sanitary works, street works or otherwise, or

(*b*) the vendor, pursuant to a notice or demand given or made after the date of the contract, has paid to the local authority, such part of the expenses as were assessed or charged on the property, in respect of any works effected by any such local authority as aforesaid,

a purchaser shall, save as hereinafter provided, on the completion of the purchase, repay to the vendor the amount so expended with interest thereon at the rate of £5 per cent. per annum, from the date fixed for completion of the purchase:

Provided that (subject to any stipulation to the contrary in the contract) the purchaser shall not be required to make any such repayment as aforesaid if the vendor had notice of the requirement or demand before the date of the contract.

(2) Where the requirement is not complied with or the payment is not made before the completion of the purchase, and such requirement or payment is one, the costs of which, had it been complied with or made before that date, the purchaser would have been liable to repay under the foregoing provisions, he shall keep the vendor indemnified from all claims in respect thereof,

and the property shall be conveyed subject to the charge or liability, if any:

Provided that nothing in this condition shall require a charge to be imposed on the property in respect of a claim, where the purchaser takes free therefrom by reason of the non-registration of a local land charge.

(3) The vendor, upon receiving notice of any such requirement or demand from a local authority, shall inform the purchaser thereof, and give to him the option of complying with the requirement or satisfying the demand within a reasonable time.

(4) Where before the date of the contract—

(*a*) a local land charge, whether general or specific, required to be registered under section fifteen of the Land Charges Act, 1925, has been so registered, or

(*b*) the vendor has notice of a requirement made by a local authority or of any other local land charge, created or arising before the commencement of that Act, in respect of which no registration is required under that Act,

the vendor shall, subject to any stipulation to the contrary in the contract, keep the purchaser indemnified from all money, if any, payable in respect of the requirement or charge.

(5) This condition shall apply to notices given in respect of the property by factory inspectors, drainage and other authorities in like manner as it applies to notices given by local authorities.

Tenancies and apportionment of rents for purposes of the sale.

22.—(1) The property is sold, and, except where the title is registered, will if the vendor so requires, be conveyed, subject, so far as the same may be subsisting, to any leases or tenancies referred to in the contract and affecting the same, and to any tenant right annexed thereto, but not so as to confirm any lease or tenancy liable to be determined.

(2) The leases or agreements (if in writing) under which the tenants hold or abstracts or copies thereof—

(*a*) in a sale by private treaty, may be inspected by a purchaser and, if so required by him, shall be produced at the office of the vendor's solicitors before the contract is signed;

(*b*) in a sale by public auction, may be inspected at the office of the vendor's solicitors, during office hours, for a period of seven days next preceding the day of sale, and in the sale room at the time of sale.

(3) A purchaser shall (whether or not he actually inspects the said originals, abstracts or copies) be deemed to have notice of,

and shall take subject to, the terms of all the existing leases or tenancies, whether arising during the continuance or after the expiration thereof, and such notice shall not be affected by any partial or incomplete statement in the contract, with reference to the leases or tenancies, and no objection shall be made on account of there not being an agreement in writing with any tenant.

(4) No objection shall be made, by reason only of the agreements or covenants by the tenant, in any tenancy agreement or underlease, not corresponding with the covenants by the lessee in the lease under which the property is held, unless the discrepancy might, in the opinion of the court, involve a purchaser in substantial damages, or give rise to a forfeiture of the lease.

(5) Where a tenancy or lease affects more than one lot, or affects other property besides the property sold, a purchaser shall take his conveyance with the benefit of the apportioned rent stated in the contract, and shall not require the assent of any tenant thereto, or otherwise require the rent to be legally apportioned.

If the rent is not apportioned by the contract, it may, before the date fixed for completion, be apportioned for the purposes of the sale by the vendor or his agent, but subject to the right of a purchaser to appeal to the court on the ground that such apportionment is unfair.

(6) The vendor shall keep the purchaser indemnified against all claims for compensation for improvements under the Agricultural Holdings Act, 1923, or by custom, agreement or otherwise in respect of—

(*a*) any tenancy which expires or is otherwise determined on or before the date fixed for completion ;

(*b*) any improvements within Parts I and II of the said Act, made under a subsisting tenancy, for which the vendor is, under the contract, to remain liable.

Save as aforesaid the Purchaser shall keep the Vendor indemnified against all claims by a tenant for compensation under the Agricultural Holdings Act, 1923, or by custom, agreement or otherwise.

(7) Where the vendor is in occupation of any land to which that Act applies—

(*a*) the vendor shall, if the contract states that the value of tillages is to be paid for separately, be treated as an outgoing tenant, and the purchaser as an incoming tenant or landlord, and accordingly the purchaser shall

pay to the vendor, on completion, all money properly payable, under any statute or in accordance with the custom of the district, by an incoming tenant or the landlord for growing crops, manure, tillages and other matters, and the amount shall be ascertained by a valuation under that Act:

Provided that no compensation shall be payable in respect of the value of the holding being increased or diminished by reason of the adoption of a special standard or system of farming, or allowed in respect of dilapidations:

(*b*) the vendor shall, until completion or rescission of the contract, carry on and manage the farm, cultivate, crop and deal with the land according to the best methods of husbandry hitherto adopted thereon, and shall not sell off any hay, straw, fodder, or root crop, but shall, subject as aforesaid, have the right, in the proper course of management, to cut and dispose of all growing crops and garden produce and to use any grazing land up to the date of actual completion.

(8) After accepting the title, the purchaser of an entire holding may in writing require the vendor to serve any notice to quit or other notice affecting the property which would be valid under the said Act or any statutory modification thereof.

Fire insurance.

23.—As respects any insurance policy to which section forty-seven of the Law of Property Act, 1925, applies—

(1) Save where the vendor is under an obligation to a third party to insure, he shall not be bound—

(*a*) to keep on foot any such insurance,

(*b*) to give to a purchaser notice of any premium being or becoming due.

(2) The vendor shall, if required by a purchaser, consent to the name of the purchaser being endorsed on the policy or entered in the books of the insurers, as being interested in the policy.

(3) If the contract is rescinded, the vendor may require such endorsement or entry to be cancelled.

MATTERS RELATING TO THE CONVEYANCE AND THE DISCHARGE OF INCUMBRANCES.

Preparation of conveyance.

24.—(1) The conveyance to a purchaser shall be prepared by him and at his own expense, and the draft thereof shall be delivered

at the office of the solicitors of the vendor, at least ten days before the date fixed for completion for perusal and approval on behalf of the vendor and other necessary parties (if any).

The engrossment of such conveyance for execution by the vendor and other necessary parties (if any) shall be left, at the said office, within four days after the draft has been returned approved on behalf of the vendor and other necessary conveying parties (if any).

Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition.

(2) Provided that where the sale is to be carried out—

(*a*) in consideration of the reservation of a perpetual rent-charge, as the only consideration in money or money's worth,

the vendor shall have the right, in the first instance, according to local usage, to submit a draft of the conveyance, and to require that the costs of the preparation thereof and of any counterpart thereof shall be borne by the purchaser, or (if no such usage obtains) to furnish a form of the conveyance from which the draft can be prepared and to charge a reasonable fee, not exceeding two guineas, for such form :

(*b*) by means of a grant of a lease or an underlease,

the vendor shall have the right to furnish a form of the lease or underlease from which the draft can be prepared and to charge a reasonable fee, not exceeding two guineas, for such form.

(3) This condition shall have effect without prejudice to the provisions of section forty-eight of the Law of Property Act, 1925, for securing the right of a purchaser to employ his own solicitor.

Settled land.

25.—Where the property is settled land, the following provisions shall apply :—

(1) Title shall be made by the tenant for life, statutory owners, persons having the powers of a tenant for life, or the personal representatives in whom the land is vested.

(2) The purchase-money shall be paid to the Settled Land Act trustees, who will join in the conveyance for the purpose only of acknowledging the receipt thereof, save where title is made by personal representatives who do not require the Settled Land Act trustees to join in the conveyance.

(3) Where the vendor is an absolute owner, subject to equitable or other interests or powers, which will be overreached

by the conveyance, the fact that he is such absolute owner shall be stated in the contract, and he shall give the covenants implied by reason of his being expressed to convey as beneficial owner, without any qualification.

In other cases, the vendor shall only be required to give the covenants implied by reason of his being expressed to convey as trustee or as personal representative, as the case requires.

(4) The vendor shall give an acknowledgment of the right of a purchaser to production and delivery of copies of documents of title (not of record) affecting the legal estate and retained by the vendor, without any undertaking or covenant for safe custody thereof, save where the vendor is to convey as beneficial owner as aforesaid, in which case an undertaking for safe custody shall also be given.

(5) Where, in the cases mentioned in the proviso to subsection (2) of section one hundred and ten of the Settled Land Act, 1925, the title to the equitable interests has been investigated by conveyancing counsel at the time when the vesting instrument was executed, and a certificate has been given by him in regard to the matters mentioned in paragraphs (i) to (iii) of that proviso, then, if—

(*a*) a copy of the certificate is furnished to a purchaser, and

(*b*) the original is produced to him,

the certificate shall be accepted as sufficient evidence of the matters which, under the said proviso, the purchaser would otherwise be concerned to investigate, and the contract shall be carried out, in like manner, as if the said proviso had not been enacted.

(6) Where there is no subsisting settlement but the vendor has power under section twenty-one of the Settled Land Act, 1925, to overreach an equitable interest or power created for money or money's worth, then if the purchaser, pursuant to section forty-two of the Law of Property Act, 1925, requires a settlement under section twenty-one aforesaid or a trust for sale under section two of the Law of Property Act, 1925, to be made, the vendor may, at his option, either create a settlement or a trust for sale for the purpose of overreaching the equitable interest or power.

Covenants for title.

26.—Save as hereinbefore provided in regard to settled land—

(1) Where the vendor, or any person concurring in a conveyance, is a mortgagee, trustee, personal representative, committee, or receiver, of a lunatic or defective, or person appointed by the court to convey, he shall be required, save so far as section seventy-seven of the Law of Property Act, 1925 (relating to covenants in conveyances subject to rents), is applicable, to give only the statutory covenants for title implied by reason of his being expressed to convey as mortgagee, trustee, personal representative of the deceased, committee, receiver or under an order of the court, and, save as aforesaid, no other covenants for title shall be required.

No covenant for title from a person, who merely joins in a conveyance to consent to the execution of a trust for sale, shall be required, notwithstanding that he may be interested in the proceeds of sale, or in the rents and profits until sale.

(2) Provided that, where joint tenants holding on trust for sale are absolutely and beneficially entitled to the net proceeds of sale, they shall be expressed to convey as beneficial owners.

Property subject to rents.

27.—(1) Where the property is subject to a rent, the provisions of sections seventy-seven and one hundred and ninety of the Law of Property Act, 1925, shall, where applicable, apply in the manner required to give effect to the contract:

Provided that where the vendor, being in a fiduciary position, is not expressed to convey as beneficial owner, the same covenants shall be implied by reference to section seventy-seven aforesaid as if he had been expressed so to convey; but the conveyance may contain a provision limiting the liability of his estate to the extent of the trust estate available for his reimbursement.

(2) Where any property is, or is to be, assigned, or sub-demised, subject to an apportioned rent mentioned in the contract, a purchaser shall accept his assignment or underlease at or subject to the apportioned rent, and, in the case of an assignment, shall not require the consent of the reversioner to be obtained, or the rent to be otherwise legally apportioned.

(3) (i) Where the contract provides that a purchaser of any lot shall take an assignment of the lease of that and other lots, and grant underleases of the other lots to the purchasers of the other lots, the assignment and underleases shall be made

accordingly, unless the vendor elects first to grant the underleases, and then assign the lease subject to the underleases so granted.

(ii) If all the lots comprised in a lease are not sold, the vendor shall carry out the sales of such of the lots as are sold by granting underleases thereof at the rents mentioned in the contract, and shall be entitled to retain the lease out of which the sub-terms are to be created.

(iii) Each underlease, and the counterpart thereof to be delivered to the lessor, shall—

(*a*) be prepared, engrossed and stamped, by and at the expense of the purchaser who is to be the under-lessee, thereunder, but without prejudice to the right of the vendor, in the first instance, to furnish a form from which the draft can be prepared ;

(*b*) be executed by the lessor and underlessee, respectively ;

(*c*) contain all proper covenants by them having regard to the form of the principal lease out of which the sub-terms are to take effect.

(iv) The lessor shall give to an underlessee an acknowledgment of his right to production and delivery of copies of the principal lease, and of any documents of title (not of record) relating thereto retained by the lessor, and also, unless the vendor is in a fiduciary position, an undertaking for the safe custody thereof,

(v) If any difference or question arises as to—

(*a*) the form of any underlease,

(*b*) how any expenses are to be borne,

(*c*) the mode of giving effect to this condition or any other matter connected therewith,

such difference or question shall, unless the contract otherwise provides, be settled by arbitration by a sole arbitrator agreed by the parties, but if the parties do not agree by a sole arbitrator nominated by the President or other principal officer for the time being of the local law society, or, where there is no local law society in the district wherein the land is situated, by the President for the time being of The Law Society, and the Arbitration Act, 1889, shall apply accordingly.

Discharge of, or indemnity against incumbrances.

28.—(1) A separate endorsed receipt or surrender of a legal mortgage may be required by a purchaser, where the mortgage is to be wholly discharged (any additional costs being borne by the purchaser), but in other cases no objection shall be made, on the ground of expense or otherwise, to a legal mortgagee joining in a conveyance.

(2) Equitable mortgagees or chargees shall not join in a conveyance, if title can be made free from the equitable interest, in the manner referred to in section forty-two of the Law of Property Act, 1925.

(3) Where an incumbrance cannot be overreached or discharged otherwise than by payment into court under section fifty of the Law of Property Act, 1925, or by an application under section one hundred and ninety-one of that Act, no objection shall be made to an application being made under those sections or either of them.

(4) Where the property is sold subject to a legal or equitable mortgage or charge (not being a charge arising under a settlement or affecting the proceeds of sale of land held on trust for sale which can be overreached), the purchaser shall, in his conveyance, enter into such covenants for indemnity with respect thereto as the vendor may reasonably require, but without prejudice to the right of the purchaser to arrange for the discharge thereof, at his own cost, before the date fixed for completion.

Sales by mortgagees.

29.—Where a mortgagee is selling, the following provisions shall apply:—

(1) If he has power to convey the fee simple or the leasehold reversion, he shall do so in accordance with section forty-two of the Law of Property Act, 1925, unless the court otherwise directs.

(2) If he has power only to convey the mortgage term, a purchaser shall accept that term, and no objection shall be made on the ground that the leasehold reversion will not be acquired.

(3) Where, in order to complete the sale, an order is required under sections ninety, ninety-one or ninety-two of the Law of Property Act, 1925, no objection shall be made on account of any necessary delay in obtaining the order.

Reservations.

30.—(1) Where the property or any part thereof is bounded by other land retained by the vendor, a purchaser and the persons deriving title under him shall not become entitled to any right to light or air, which would affect prejudicially the user by the vendor or the persons deriving title under him of any adjoining or neighbouring land of the vendor, for building purposes; and the conveyance shall contain a reservation or provision for giving effect to this condition, and, in the case of

registered land, an application shall, at the cost of the person requiring the entry, be made to the registrar to enter a notice of the reservation in the register.

(2) Where, by the contract, any property is to be sold subject to an easement, right, or privilege, to be granted or reserved for the benefit of any other property, the conveyance (if any) of the servient property shall contain a reservation of the easement, right, or privilege to the vendor or other the owner of the dominant property, in accordance with section sixty-five of the Law of Property Act, 1925.

The conveyance (if any) of the dominant property, shall contain a reference to, or a grant of, the easement, right, or privilege, as the case may require.

Save where the title is registered, a memorandum of the grant, or reservation, of the easement, right, or privilege, shall be endorsed on a document of title relating to the servient property, in accordance with section two hundred of the Law of Property Act, 1925, at the cost of the person requiring the endorsement.

Where the title is registered, an application shall, at the cost of the person requiring the entry, be made to the registrar—

(*a*) In the case of the dominant property, to register the easement, right, or privilege for the benefit of that property;

(*b*) In the case of the servient property, to register a notice of the easement, right, or privilege, against the title.

Save where the benefit of the easement, right, or privilege, is to be registered with an absolute or good leasehold title, the owner of the servient property shall, if so required, give to the owner of the dominant property an acknowledgment of his right to production and delivery of copies of the documents of title (not of record) relating to the servient property, and, unless the owner of the servient property is in a fiduciary position, an undertaking for the safe custody thereof; and where the title to the servient property is registered, an authority to inspect the register of that property shall be furnished.

If any difference arises as to the form in which the grant or reservation is to be made, such difference shall, unless other provision is made by the contract, or the parties otherwise agree, be submitted to one of the conveyancing counsel of the court (not being a counsel acting for any of the parties) nominated

by the President or other principal officer for the time being of the local law society, or, where there is no local law society in the district wherein the land is situated, by the President for the time being of The Law Society, and the Arbitration Act, 1889, shall apply accordingly.

Sales subject to existing covenants.

31.—(1) Where—

(*a*) the vendor, or

(*b*) the estate of any testator or intestate, for whom the vendor is acting as personal representative, or

(*c*) any trust estate, for which the vendor is acting as trustee,

is liable for any future breach under—

(*a*) any existing restrictive covenant affecting the property sold, or

(*b*) any positive covenant or provision relating to the property sold,

then, if the property is, in the contract, expressed to be sold subject to any such restrictive or other covenant or provision, the purchaser shall, in his conveyance, by way only of indemnity, covenant thenceforth to observe and perform the same, and keep the vendor and his estate and effects, or the estate and effects of such testator or intestate, or the trust estate, as the case may be, indemnified from all claims in respect of the said covenants or provisions or any of them, so far only as those covenants or provisions relate to the property purchased by him :

Provided that, where the liability aforesaid ceases under any such restrictive covenant, by reason of the execution of the conveyance, no covenant for indemnity shall be required as respects any liability which so ceases.

(2) Where the requisite covenant for indemnity will be implied under section seventy-seven of the Law of Property Act, 1925, no express covenant shall be given under this condition.

(3) Where any restrictive covenant affects registered land, an application shall, at the cost of the person requiring the entry, be made to the registrar to enter notice thereof in the register, unless the restrictive covenant is already referred to in the register.

The imposition of restrictive or other covenants.

32.—(1) Where the contract provides that restrictive or other covenants or stipulations shall be imposed on the property or any part thereof, or entered into by a purchaser, he shall, in the conveyance, covenant with the vendor and, if so required, with any legal mortgagee joining in the conveyance, that the

purchaser and the persons deriving title under him to the property intended to be affected, will, for the benefit of the property for which the stipulations are made, observe and perform the covenants and stipulations mentioned in the contract.

(2) Where the contract provides that the liability for a breach, by any owner of the property intended to be affected by any restrictive covenant, shall cease, if the breach occurs after he has parted with all his interest in the property in regard to which the breach occurs, a provision to that effect shall be inserted in the conveyance; but that provision shall not extend to the liability of a purchaser, and his estate and effects, as respects the breach of any positive covenant or stipulation.

(3) Save where the title to the property to be affected is, or is about to be, registered (in which cases application shall be made to the registrar to enter notice of the restrictive covenant in the register) a covenantee may register a land charge in respect of any such restrictive covenant.

Duplicates and counterparts.

33.—(1) Where, by reason of any covenant, reservation or otherwise, a purchaser is bound to execute the conveyance, he shall, at the option of the vendor, either—

(*a*) execute a duplicate, or

(*b*) save where the conveyance is lodged at the land registry, give to the vendor a separate acknowledgment of his right to production and delivery of copies of the conveyance, and, unless the purchaser is in a fiduciary position, an undertaking for the safe custody thereof.

(2) The duplicate or acknowledgment shall be prepared, engrossed, and stamped, by and at the expense of the vendor, but the purchaser shall approve and execute the same, free of expense to the vendor.

(3) Where any duplicate or counterpart is executed, the purchaser shall, if required, produce the original duly stamped, to enable the stamp on the duplicate or counterpart to be denoted.

Documents.

34.—(1) Where the vendor, or his mortgagee, or trustee, retains possession of documents (not of record) relating to the title of a purchaser, under the provisions of section forty-five of the Law of Property Act, 1925, the usual statutory acknowledgments and undertakings shall, save as hereinafter provided, be given in relation to those documents, by the person having the possession thereof, and the costs in reference thereto shall be borne by the person requiring the acknowledgment or undertaking to be given.

(2) Where property is sold in lots, the following provisions, respecting documents (not of record) shall apply:—

(i) After the sale of all the lots, or of all the lots to which any set of documents relate, as the case may be, the purchaser whose purchase-money is largest, or, in the case of equality, the purchaser of the lot first sold, shall ultimately be entitled to such documents in the possession of the vendor as relate to—

(*a*) the property purchased by that purchaser, and

(*b*) other property sold,

but do not relate to property retained by the vendor:

Provided that, if all the lots to which the documents relate are not sold within five years from the date of the first sale, the vendor may at his option deliver the documents to the last purchaser to complete:

(ii) Before the said documents are handed over to such purchaser, the requisite acknowledgments and undertakings shall be given to the purchasers (including, if so required, the purchaser who is ultimately to receive those documents), in accordance with sub-section (1) of this condition.

(3) No undertaking, or covenant, for safe custody of documents, shall be required to be given by a trustee, mortgagee or personal representative.

(4) Where the documents are in the possession of a mortgagee, trustee, or personal representative, a purchaser shall be satisfied with an acknowledgment of the right to production from the person having the possession thereof, without any covenant for safe custody from any other person, save that if a mortgagor, not being in a fiduciary position, concurs in a conveyance, he shall, if so required, covenant that if and when he receives the documents, he will, at the cost of the person requiring it, give an undertaking for the safe custody thereof.

(5) For the purpose only of acknowledgments and undertakings to be given under these conditions, probates and letters of administration, granted after 1925, with any endorsements required by statute to be made thereon, shall not be deemed to be documents of record, and accordingly a purchaser may require the same to be produced and included in an acknowledgment or undertaking, but without prejudice to the right of a vendor to retain the same.

(6) The vendor shall not be required to procure the production or delivery, or trace or state who has the possession of any

document, not in the possession of the vendor or his mortgagee or trustee, and of which he is unable to obtain production, nor, save at the expense of the purchaser, to procure any information relating thereto, not within his knowledge.

Misdescription, Compensation, and power to Re-sell.

Misdescription and compensation.

35.—(1) Measurements and quantities if substantially correct shall not be the subject of compensation nor shall any compensation be payable in respect of any mistake in a sale plan, furnished for the purposes of identity, but nothing in this sub-section shall prevent compensation being paid or allowed under the next sub-section where an incorrect statement, error or omission, as to measurements quantities or otherwise, materially affects the description of the property.

(2) Subject as aforesaid, any error, omission, or mis-statement in the contract, which may be discovered before completion, though materially affecting the description of the property, shall not annul the sale, or entitle a purchaser to be discharged from his purchase, but if pointed out before completion and not otherwise, compensation shall be made to or by a purchaser, as the case may require

(3) The amount of such compensation, if the parties do not agree, shall, unless the contract otherwise provides, be settled by arbitration by a sole arbitrator agreed by the parties, but if the parties do not agree by a sole arbitrator nominated by the President or other principal officer for the time being of the local law society, or, where there is no local law society in the district wherein the land is situated, by the President for the time being of The Law Society, and the Arbitration Act, 1889, shall apply accordingly.

(4) Nothing in these conditions shall—

(*a*) enable the vendor or the purchaser to compel the purchaser or the vendor, with or without compensation, to accept or to convey property which differs substantially, whether in quantity, quality, tenure or otherwise, from the property agreed to be purchased or sold;

(*b*) affect the right of the purchaser to rescind or repudiate the contract where compensation for a claim attributable to a material error, omission or mis-statement, cannot be assessed.

Power for vendor to re-sell after notice.

36.—(1) If a purchaser shall neglect or fail to perform his part of the contract, the vendor may give to the purchaser or to his solicitor at least twenty-one days' notice in writing specifying the breach and requiring the purchaser to make good the default before the expiration of the notice.

(2) If the purchaser does not comply with the terms of the said notice—

(*a*) the deposit money, if any, shall, unless the court otherwise directs, be forfeited to the vendor, or, in the case of settled land, to his Settled Land Act trustees;

(*b*) the vendor may re-sell the property without previously tendering a conveyance to the purchaser;

(*c*) the contract shall become void;

and the following provisions shall apply.

(3) Any resale may be made by auction or private contract, at such time, subject to such conditions, and in such manner generally, as the vendor may think proper.

(4) If thereby the vendor shall incur a loss within one year from the date of the contract, by reason of diminution of price, the purchaser shall pay to the vendor, or, in the case of settled land, to his Settled Land Act trustees, the amount of such loss, as liquidated damages, receiving credit for the deposit, if any; but any surplus money arising on a resale shall be retained by the vendor, or, in the case of settled land, by his Settled Land Act trustees.

(5) On any resale or attempted resale by auction—

(*a*) the property may be bought in,

(*b*) all expenses consequent on an unsuccessful attempt, made in good faith within one year, to resell, shall be forthwith paid to the vendor or, in the case of settled land, to his Settled Land Act trustees, by the purchaser, after receiving credit for the deposit, if any.

(6) In this condition "purchaser" means an original defaulting purchaser.

Definitions and Application.

Interpretation.

37.—In these conditions, where the context admits—

(1) "Vendor" and "purchaser" mean the persons respectively acting in that capacity, and include the persons respectively deriving title under them.

(2) " Property " means the subject matter of the sale, and, in a sale in lots, includes a lot or lots.

(3) " The Contract " means any contract incorporating these conditions, or any of them, by reference thereto, and includes the particulars, special conditions and sale plan, if any, used in connexion with the contract.

(4) Where the property is sold in lots, " sale " and " purchase " mean the sale or purchase of each lot to, or by, a purchaser.

(5) " Conveyance " includes an assignment; and, in the case of registered land, means the instrument of transfer; and where title is to be made by demise or subdemise it means the lease or underlease to be granted; and " convey " has a meaning corresponding to that of " conveyance."

(6) In a sale by private treaty references to the " date of sale " shall be construed as references to the date of the contract.

(7) Subject as aforesaid expressions have the same meanings as in the Law of Property Act, 1925.

Short title and application.

38.—(1) These conditions may be cited as the General Conditions of 1925.

(2) Subject to the appropriate licence being obtained from The Law Society and to the payment of the requisite fees, these conditions may, by reference, be incorporated generally or specifically, with or without modification, in any contract for the sale of any interest in land, whether by auction or by private treaty, and in the latter case, so far as the same are applicable.

(3) These conditions do not apply to sales by the court, but any one or more of the conditions may (subject to the requisite licence being obtained from The Law Society and to the payment of the requisite fees) be incorporated, with or without modification, in conditions of sale by the court, by reference to the numbers of the conditions, and in that case references to the date of sale shall be construed as referring to the time when the master's certificate becomes binding, and references to the purchase-money shall be construed as referring to the amount of the bidding at the sale.

(4) These conditions may be made to apply to a contract for exchange, and when so applied—

(*a*) " vendor " means the person to give land in exchange in relation to that land;

(*b*) " purchaser " means the person to take land in exchange in relation to that land;

(*c*) references to sales or completion of sales shall be construed as referring to exchanges or the completion thereof;

(*d*) no deposit shall be payable in respect of equality money, if any, unless the contract so provides, but in other respects references to "purchase-money" shall be construed as referring to equality money.

(5) Where, under these conditions, any matter is to be settled by arbitration, the arbitrator shall have power to decide by whom and in what manner the costs of the arbitration are to be borne, and, when borne by more than one party, in what proportions or amounts.

(6) Nothing in these conditions shall, as respects registered land, affect the provisions of section one hundred and ten of the Land Registration Act, 1925.

(7) If any discrepancy arises between these conditions, and the provisions of the instrument incorporating the same, the provisions of the last mentioned instrument shall prevail.

(8) The marginal notes and headings to these conditions shall not affect the construction thereof.

FORM OF AGREEMENT.

AN AGREEMENT made the day of 19 between

.

.

hereinafter called "the Vendor[s]" (by his [their] agents mentioned below) of the one part and

.

.

hereinafter called "the Purchaser[s]" (by his [their] agents mentioned below) of the other part

WHEREBY it is agreed that the Vendor[s] shall sell and the Purchaser[s] shall purchase [the property] [Lot[s]] described in [the above Particulars] at the price of . (independently of any

valuation money) subject to the foregoing Special Conditions of Sale and the General Conditions of 1925*

*In a private contract add "so far as the same are applicable to a sale by private treaty"

As Witness the hands of the parties hereto or their agents.

	£	s.	d.
Purchase money ..			
Less deposit ..			
Balance ..			
Valuation money (if any)			
Total ..			

6d. Stamp.

To be signed over an agreement stamp.

[As Agents for the Vendor[s]]
[As (*h*) stakeholders]
[As Agents for the Settled Land Act trustees of the Vendor[s]]

We hereby acknowledge the receipt of the above-mentioned deposit this day of 19 .

2d. Stamp.

Abstract of title to be sent to

(*h*) Stakeholders should not be employed where the vendor is in a fiduciary position.

PART III.

SALES BY AUCTION.

PRECEDENTS OF CONDITIONS OF SALE BY AUCTION.

No. 1.

VARIATIONS OF THE GENERAL CONDITIONS OF 1925, *applicable to Sales of* FREEHOLDS, ENFRANCHISED LAND *and* LEASEHOLDS (*otherwise than by the court*), *to be prefixed as part of the* SPECIAL CONDITIONS. [*Equitable interest in Legal Estate.*]

PARTICULARS.

It is assumed that the particulars will—

1. *Give a sufficient description of the property or lots with the aid of a sale plan when expedient.*

2. *State what land tax, tithe rentcharge, modus, or tithe redemption annuity, if any, affects the property or each lot. Or if free, that this will be stated.*

3. *State what—*

(a) *quit rents and other incidents of tenure remain unextinguished,*

(b) *compensation or other rentcharges,*

(c) *existing easements, rights, restrictive easements or similar burdens,*

(d) *leases and tenancies,*

(e) *local land charges,*

(f) *legal mortgages, to be left undischarged,*

affect the property or each lot.

4. *State how any rents, or rentcharges or other liabilities are to be apportioned between the property sold and the land retained or between any lots, or whether any liabilities are to be borne exclusively by any property in exoneration of any other property.*

5. *State what mines, easements, rights or privileges are to be granted, excepted or reserved, by reference to the sale plan or otherwise.*

6. *State in the general remarks, what restrictive or other covenants besides the usual covenants for title, are to be entered into, and whether any and what valuations are to be made.*

7. *State the tenure, and in the case of leaseholds refer to the lease, the term sold and the rent reserved, and in the case of*

rentcharges, refer to the instruments (if any) creating them, showing whether the rents are perpetual or terminable.

8. *By means of notes on the sale plan give any necessary explanations as to the intended ownership of hedges, ditches, walls and other matters affecting the boundaries between lands sold and retained, or between different lots.*

VARIATIONS *to be prefixed when required to the* GENERAL CONDITIONS *of* 1925 (*called the General Conditions*) *as part of the* SPECIAL CONDITIONS *therein referred to.*

1. The Auctioneers are Messrs. —— whose office is at ——. Auctioneers.

2. A Purchaser shall in addition to his purchase-money pay for [the fixtures referred to in the above particulars] [*or* the timber and other wood described in General Condition No. 3 growing on the property [his Lot or Lots]] according to a valuation. Valuations.

[*This clause will be left out if no valuations are required. See General Condition No.* 3. *For valuations on the sale of a business see Special Conditions Nos.* 9 *and* 10, *supra.*]

3. The date for completion shall be the —— day of —— 19—. [*See General Condition No.* 5.] Date fixed for completion.

4. A Purchaser [of Lots —— or any of them] shall, subject to paying a further sum, by way of deposit, equal with the amount of his original deposit, to one-half of his purchase-money, independently of any valuation money, be entitled to take possession of [the property] [the said Lots] before the date fixed for completion. [*See General Condition No.* 6. *This clause will be left out if no such power is to be given.*] Power to take possession before date fixed for completion.

5. The balance of the purchase money shall bear interest at the rate of £ —— per cent. per annum from the date fixed for completion. [*See General Conditions Nos.* 3 (5) *and* 7. *If the rate is to be* £5 *per cent. this clause will be left out.*] Rate of interest on purchase money.

6. Abstracts of title shall be delivered within —— days of the date of sale. [*See General Condition No.* 8. *If abstracts are to be delivered within fourteen days this clause will be left out.*] Delivery of abstract.

7. Requisitions shall be delivered within —— days from the delivery of the abstract, whether or not the abstract is delivered within the time prescribed, and answers to requisitions shall be replied to within —— days after the delivery of the answers. [*See General Condition No.* 9. *If the requisitions and replies are to be delivered within fourteen and ten days respectively this condition will be left out.*] Requisitions and replies to answers.

Commencement of title.

8. The abstract of title to the property shall commence with [*or* The abstract of title shall commence—

(i) As to Lots —— with ——

(ii) As to Lots —— with ——

(iii) As to the remainder of the property with——.]

[*or* The property is registered with an absolute [good leasehold] title.]

[*or* The property was registered in the year—— with a possessory title and as respects the title prior to the date of first registration the abstract shall commence with——.]

[*or* The property was registered in the year —— with a qualified title which excluded from the effect of registration [*state the interest or claim left outstanding*] and the abstract of title as respects such interest or claim shall commence with ——.]

[*As to commencements of title*, see *General Conditions Nos.* 12-15. See also *Special Conditions Nos.* 12 *to* 53, *supra.*]

Matters arising on the abstracts.

9. [See *General Conditions Nos.* 16 *and* 17. *Any point not covered by the General Conditions should be dealt with by Special Conditions*, see *Forms Nos.* 54 *to* 84, *supra.*]

Identity and boundaries.

10. A Purchaser shall not be entitled to require any statutory declaration as to identity.

[See *General Condition No.* 18. *This clause should be left out if the statutory declaration can be obtained.* See also *Special Condition No.* 85.]

11. [See *General Conditions Nos.* 19-23. *Any such matter not covered by the General Conditions should be dealt with by Special Conditions*, see *Forms Nos.* 86 *to* 105, *supra.*]

12. The Vendor is selling as —— [See *General Conditions Nos.* 24-34. *Any matters not covered by these conditions should be dealt with by Special Conditions*, see *Forms Nos.* 106 *to* 140C, *supra.*]

Other matters arising on the particulars.

Matters relating to the conveyance.

If the Vendor is an absolute owner, selling under the Settled Land Act to overreach equitable interests, this must be mentioned. Matters relating to the apportionment of or indemnity against rents should be explained if the particulars are not explicit on these points. Similarly intended reservations or grants of easements, and any special methods to be adopted in carrying out the sales should be explained. Provision should be made for any covenants for indemnity to be given, or restrictive or other covenants to be entered into.]

NOTE.—In the General Conditions of 1925, the singular includes the plural, the masculine includes the feminine and "month" means calendar month: L. P. Act, 1925, s. 61.

No. Ia.

CONDITIONS *of* SALE (*a*) *applicable to* FREEHOLDS, LAND *subject to* MANORIAL INCIDENTS, *and* LEASEHOLDS. VARIATIONS *where the property is sold in* LOTS, *or the* TITLE *is Registered.* (*Equitable interest in Legal Estate.*)

1. The highest bidder shall be the Purchaser, the Vendor[s] fixing a reserve price [for each Lot] and reserving the right to bid up to such price by himself [themselves] or his [their] agent (*b*) [and also the right to withdraw, consolidate and re-arrange Lots]. Highest bidder. Reserve price.

(*a*) Conditions of sale must, save where an absolute or good leasehold title is registered, necessarily vary according to the state of the title to the property and having regard to the particular circumstances of each case. Hence, in preparing the precedents in this and the next part it has been thought advisable to set out such of the conditions as are applicable to practically every case, and by reference to the preceding groups of forms to suggest to the draftsman the additional provisions he may require. Preparation of conditions of sale.

It is convenient to have some rule as to the order of conditions of sale, and the following is adopted in this precedent as well as in the General Conditions of 1925, as agreeing with the order in which the transactions take place:— Order of conditions of sale.

(1) As to the auction, deposit, taking possession, and valuations.
(2) As to the commencement of title and the contents of the abstract.
(3) Matters arising on the abstract.
(4) Identity and other matters arising on the particulars.
(5) The conveyance and its contents.
(6) Documents.
(7) Compensation and miscellaneous matters.
(8) Re-sale on default.

The Forms of Special Conditions, *supra*, have been arranged under these headings and in this order. This precedent does not apply to sales by the court. It will seldom be used unless the parties have no authority to use the General Conditions of 1925. Explanatory foot notes are given with this precedent to enable the General Conditions of 1925 to be printed, *supra*, without comment.

(*b*) The Sale of Land by Auction Act, 1867, provides that the particulars or conditions of sale by auction of land shall state whether it will be sold without reserve or subject to a reserve price, or whether a right to bid is reserved, and that if it is stated that the land will be sold without reserve or to that effect, it shall not be lawful for the seller to employ any person to bid, or for the auctioneer to take knowingly any bidding from such person; and that when any such sale is declared to be subject to a right for the seller to bid, the seller, or any one person on his behalf, may bid at the auction in such manner as he may think proper. A statement that the sale is subject to a reserve price does not enable the vendor to employ a bidder; the latter right must be expressly reserved also: *Gilliatt* v. *G.* (1870), L. R. 9 Eq. 60; 39 L. J. Ch. 142; Dart, 7th ed., 121, 137, 210. Sale of Land by Auction Act, 1867 (restrictions under).

At a sale by auction, where the fact that there is a reserve is known, and the auctioneer knocks down the property to the highest bidder, who has bid less than the reserve, the bidder has no right of action against the auctioneer,

Advance on bidding and retracting.

2. No person shall advance less than £——[the sum to be fixed by the auctioneer] on each bidding, or retract a bidding; and if any dispute arise, the property [Lot in dispute] shall be put up again at the last undisputed bidding, or the auctioneer may determine the dispute.

[*Add here conditions as to additional payments to be made by the Purchaser for timber, fixtures, &c., see Forms under Sect. I, supra, "As to the Auction, &c." If incumbrances are to be discharged by payment into Court then take Form No.* 2.]

Deposit.

3. (1) The [Each] Purchaser shall at the close of the sale to him pay a deposit (*c*) of £— per cent. on the amount of his purchase-money, and sign an agreement in the form subjoined

Completion.

to these conditions for the completion of his purchase according to these conditions, and pay the balance of his purchase-money on the —— day of —— next (*d*) at the office, No. —— Street in

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either for breach of duty in refusing to sign a memorandum or otherwise complete the contract, or for breach of warranty of authority to accept the bid: *McManus* v. *Fortescue* [1907], 2 K. B. 1; 76 L. J. K. B. 393.

(*c*) The acceptance of a cheque for the deposit in lieu of cash is usual, and not unreasonable, even where the vendor is a mortgagee exercising his powers of sale: *Farrer* v. *Lacy & Co.* (1885), 31 Ch. D. 42; 55 L. J. Ch. 149. A vendor is not bound to accept a cheque: *Johnston* v. *Boyes* [1899], 2 Ch. 73; 68 L. J. Ch. 425; Dart, 7th ed., 137.

Where auctioneer knocks down property at less than reserve price.

Where the deposit is paid to the auctioneer without any special agreement, he holds it as stakeholder, and is entitled to the interest earned: *Harington* v. *Hoggart* (1830), 1 B. & Ad. 577; 9 L. J. (O. S.) K. B. 14; and see *Lee* v. *Munn* (1817), 8 Taunt. 45; 1 Moore, C. P. 481; Dart, 7th ed., 203. If this is not desired, it should be expressed to be paid to the auctioneer or vendor's solicitor "as agent for the vendor": *Edgell* v. *Day* (1865), L. R. 1 C. P. 80; 35 L. J. C. P. 7; *Ellis* v. *Goulton* [1893], 1 Q. B. 350; 62 L. J. Q. B. 232; Dart, 7th ed., 215; and article in 52 Sol. J. 256.

Payment of deposit.

Stakeholders.

Where the vendor is in a fiduciary position the deposit should not be paid to stakeholders, as the vendor will be liable to refund any loss caused by an absconding stakeholder. The decision in *Edmonds* v. *Peake* (1843), 7 Beav. 239; 13 L. J. Ch. 13, merely shows that executors (as opposed to trustees) selling leaseholds will not be liable for the loss of a deposit paid to the auctioneer as agent for both parties.

Where tenant for life selling under the S. L. Act, 1925.

If the sale is by a tenant for life under the S. L. Act, 1925, and the trustees are willing that the vendor's solicitors or auctioneers shall receive the deposit, the words "as Agents for the Settled Land Act Trustees" should be substituted for "the Vendor's solicitors." The trustees should require the solicitors to pay the money at once into the trustees' account.

Where mortgagees concur.

Where the sale is made with the concurrence of mortgagees who are willing that the deposit should be paid to the mortgagors' solicitor, they should appoint such solicitor their agent for that purpose.

Purchaser's lien where contract determined otherwise than by his default.

The purchaser has a lien on the property for his deposit, if the contract is determined otherwise than by the purchaser's wilful default: *Whitbread* v. *Watt* [1902], 1 Ch. 835; 71 L. J. Ch. 424. See also *Ridout* v. *Fowler* [1904], 2 Ch. 93; 73 L. J. Ch. 579.

(*d*) *I.e.*, next after the day of sale: *Dawes* v. *Charsley* (1886), W. N. 37, 78.

——, of Messrs. ——, the solicitors of the Vendor[s], at which time and place the purchase[s] shall be completed.

(2) The [A] Purchaser paying his purchase-money shall as from that day be let into possession or receipt of rents and profits and pay all outgoings.(*e*) Possession.

(3) Up to that day all rent, rates, taxes, and other outgoings shall (if necessary) be apportioned and so that all rates shall be apportioned according to the period for which they are intended to provide and not as running from the dates when the same are made or allowed,(*f*) and the balance shall be paid by or allowed to the Purchaser on completion. Apportionment.

(4) If from any cause whatever, other than wilful default (*g*) on the part of the Vendor[s], the completion of the [any] purchase is delayed beyond the before-mentioned day, the balance of the purchase-money shall bear interest at the rate of £5 per cent. per annum from that day to the day of actual payment thereof.(*h*) Interest in case of delay.

(*e*) In the General Conditions of 1925 "possession" includes receipt of rents and profits for the definitions of the L. P. Act, 1925, are incorporated. The term "outgoings" includes all liabilities incurred in respect of the property before the day fixed for completion for drainage, paving, or other works: see *Midgley* v. *Coppock* (1879), 4 Ex. D. 309; 48 L. J. Ex. 674; *Tubbs* v. *Wynne* [1897], 1 Q. B. 74; 66 L. J. Q. B. 116; *Barsht* v. *Tagg* [1900], 1 Ch. 231; 69 L. J. Ch. 91; Dart, 7th ed., 134, 143; see also note to Form No. 104, which should be used where the purchaser is to repay money expended by the vendor before completion in complying with the requirements of local authorities. Under an open contract the vendor's liability to discharge outgoings ceases on the date when a good title is first shewn: *Barsht* v. *Tagg* [1900], 1 Ch. 231; 69 L. J. Ch. 91. Meaning of "outgoings."

(*f*) See *Cheney* v. *Tallowin* [1904], 2 K. B. 763; 73 L. J. K. B. 943, as to poor rate.

(*g*) The following are instances of wilful default: Vendor going abroad (*Re Young and Harston* (1886), 31 Ch. D. 168; 54 L. J. Ch. 1144); delay in obtaining concurrence of necessary parties (*Re Hetling and Merton* [1893], 3 Ch. 269; 62 L. J. Ch. 783; *Re Earl of Strafford and Maples* [1896], 1 Ch. 235; 65 L. J. Ch. 124); misinterpretation of the conditions of sale (*Re Pelly and Jacob* [1899], 80 L. T. 45). But misdescription, arising from the vendor's neglect to examine his own title (*Re Mayor of London and Tubbs* [1894], 2 Ch. 524; 63 L. J. Ch. 580); an unknown defect in the vendor's title (*Re Woods and Lewis* [1898], 2 Ch. 211; 67 L. J. Ch. 475); an unsuccessful attempt to repudiate the contract (*North* v. *Percival* [1898], 2 Ch. 128; 67 L. J. Ch. 321; and see *Re Bayley-Worthington and Cohen* [1909], 1 Ch. 648; 78 L. J. Ch. 351); and a mistake as to the correct form of conveyance (*Bennett* v. *Stone* [1903], 1 Ch. 509; 72 L. J. Ch. 240), have been held not to amount to wilful default. The omission of the words "wilful default" makes no difference: *North* v. *Percival*, *supra*; and see generally Dart, 7th ed., 664, 665. To some extent these cases are met in the General Conditions of 1925. "Wilful default."

(*h*) Where there is delay in completion not caused by the wilful default of the vendor, the purchaser cannot escape paying interest by depositing the purchase-money in a bank: *Re Riley to Streatfield* (1886), 34 Ch. D. 386; 56 L. J. Ch. 442. Delay in completion.

Time for delivery of requisitions.

4. (1) The [Each] Purchaser shall within —— days after the delivery of his abstract (*i*) [*or where an absolute or good leasehold title is registered and no abstract is to be furnished* "after an authority to inspect the register has been furnished" *and leave out references to an* "*abstract*"] send to the solicitors of the Vendor[s] a statement in writing of all the objections and requisitions (if any) to or on the title or evidence of title, or the abstract or the particulars or these conditions, and subject thereto the title shall be deemed accepted, and all objections and requisitions not included in any statement sent within the time aforesaid shall be deemed waived, and an abstract, though in fact imperfect, shall be deemed perfect, except for the purpose of any further objections or requisitions which could not be taken or made on the information therein contained.(*j*)

Replies to answers.

(2) An answer to any objection or requisition shall be replied to in writing within ten days after the delivery thereof, and if not so replied to, shall be considered satisfactory.

Interest.

On an open contract interest is payable from the time when the purchaser could prudently take possession (*Re Keeble and Stillwell* [1898], 78 L. T. 383); and in an action for specific performance from the date of the Master's certificate: *Halkett* v. *Earl of Dudley* [1907], 1 Ch. 590; 76 L. J. Ch. 330.

Purchaser's right to rescind contract.

Where time is of the essence of the contract and delay in completion is caused by the vendor's default, the purchaser may rescind the contract, He may make time the essence of the contract by giving reasonable notice to the vendor: *Stickney* v. *Keeble* [1915], A. C. 386; 84 L. J. Ch. 259; *Re Bayley and Shoesmith*, 87 L. J. Ch. 626.

Purchaser's right to compensation for deterioration.

As to the purchaser's right to compensation for deterioration, &c., see Dart, 7th ed., 672-673; *Re Wilson and Stevens* [1894], 3 Ch. 546; 63 L. J. Ch. 863; *Jones* v. *Gardiner* [1902], 1 Ch. 191; 71 L. J. Ch. 93.

Delivery of abstract.

(*i*) It is not advisable to fix a time for delivery of the abstract, as the vendor must deliver an abstract within a reasonable time or the purchaser may rescind (*Compton* v. *Bagley* [1892], 1 Ch. 313; 61 L. J. Ch. 113); but if a time is fixed and the vendor fails to deliver a perfect abstract (see Dart, 7th ed., 138, 317) within the time specified, any condition binding the purchaser to make his objections within a specified time will not be effectual: *Upperton* v. *Nickolson* (1871), L. R. 6 Ch. 436; 40 L. J. Ch. 401; *Re Todd and McFadden* [1908], 1 Ir. R. 213; *Oakden* v. *Pike* (1865), 34 L. J. Ch. 620, unless it is (see General Conditions of 1925) stipulated that the requisitions are to be delivered within a specified time from the "actual" delivery of the abstract, whenever that may be.

Time for objections.

(*j*) In the absence of words to the contrary time begins to run from the delivery of a perfect abstract, but the condition as to time will not be binding on the purchaser where the vendor cannot show a good title (*Want* v. *Stallibrass* (1873), L. R. 8 Ex. 175; 42 L. J. Ex. 108); nor where the vendor's power to sell is in question (*Re Tanqueray-Willaume and Landau* (1881), 20 Ch. D. 465; 51 L. J. Ch. 434); though it will, where the requisition relates to the subsequent Jevolution of the title: *Pryce-Jones* v. *Williams* [1902], 2 Ch. 517; 71 L. d. Ch. 762; Dart, 7th ed., 174.

When time is "of the essence."

Stipulations as to "time" are not generally of the essence of the contract unless so stated: L. P. Act, 1925, s. 41.

(3) Time shall be of the essence of this condition. Time.

(4) If the [any] Purchaser shall take any objection or make any requisition (*k*) which the Vendor[s] shall be unable or on the ground of unreasonable expense unwilling to remove or comply with, or if any question shall arise as to the conveyance (*l*) [*in the case of registered land substitute* "instrument of transfer" *for* "conveyance" *throughout*] and the Purchaser shall not withdraw such objection or requisition or waive the question within seven days after being required so to do, the Vendor[s] may by notice in writing delivered to the [such] Purchaser or his solicitor and notwithstanding any intermediate negotiation or litigation,(*m*) rescind the contract for sale, and the Vendor[s] shall within one week after such notice repay to the Purchaser [whose contract is so rescinded] his deposit money, which shall be accepted by him in satisfaction of all claims on any account whatever, and the Purchaser [whose contract is so rescinded] shall return forthwith all abstracts and papers in his possession belonging to the Vendor[s]. Power to rescind.(*n*)

5. The abstract of title [to Lots —] shall commence with a Conveyance on sale dated the —— [*or* a mortgage *or* a settlement, &c.(*o*) *Where an absolute or good leasehold title is registered,* Commencement of title.

(*k*) It is unnecessary to repeat the words "to or on the title, &c.": *Re Terry and White* (1886), 32 Ch. D. at p. 24; 55 L. J. Ch. 345.

(*l*) There is no objection to the general practice of extending the power to rescind to matters of conveyance: *Re Deighton and Harris* [1898], 1 Ch. 458; 67 L. J. Ch. 240; though it has been disapproved in *Hardman* v. *Child* (1885), 28 Ch. D. 712; 54 L. J. Ch. 695. As to the distinction between requisitions as to title and those as to conveyance, see Dart, 7th ed., 176. Vendor's power to rescind.

(*m*) Where these or similar words are not used the vendor is unable to rescind after judgment: *Re Arbib and Class* [1891], 1 Ch. 601; 60 L. J. Ch. 263; *Holliwell* v. *Seacombe* [1906], 1 Ch. 426; 75 L. J. Ch. 289, without paying compensation: *Re Quigley and M'Clay* [1918], 1 I. R. 347; but he may do so at any earlier time: *Isaacs* v. *Towell* [1898], 2 Ch. at p. 292; 67 L. J. Ch. 508; *Proctor* v. *Pugh* [1921], 2 Ch. 256. See generally, as to the vendor's power to rescind: Dart, 7th ed., 175; and as to costs, *ib.*, 178, and *Holliwell* v. *Seacombe, supra.*

(*n*) The power of rescission must not be arbitrarily nor unreasonably exercised (*Quinion* v. *Horne* [1906], 1 Ch. 596; 75 L. J. Ch. 593); and cannot be exercised at all where the vendor has no title; *Re Deighton and Harris, supra;* nor where he can only show title to part (*Re Jackson and Haden* [1906], 1 Ch. 412; 75 L. J. Ch. 226); unless he has made an innocent misrepresentation: *Re Simpson and Moy* [1909], 53 Sol. J. 376; and see *Merrett* v. *Schuster* [1920], 2 Ch. 240; 89 L. J. Ch. 399; *Re Milner and Organ* [1920], 89 L. J. Ch. 315. See further as to the exercise of the power, and generally as to when it will be upheld, Dart, 7th ed., 176, *et seq.* A notice to rescind signed without prejudice is void: *Re Weston and Thomas* [1907], 1 Ch. 244; 76 L. J. Ch. 179. Rescission.

for this condition, substitute "The property being registered with an absolute [good leasehold] title only such copies, abstracts and evidence shall be furnished with the written authority to inspect the register as may be requisite to comply with the requirements of section one hundred and ten of the Land Registration Act, 1925, and, unless the purchase-money [for the Lot or Lots acquired by a Purchaser] exceeds £1,000, subject to the liability of the [such] Purchaser to pay the costs mentioned in that section]" [or *if it is desired to offer the Purchaser anything in excess of his rights, see Forms under Sec. IX, supra*].

Particular points arising on the abstract.

6. *Insert here any conditions required for precluding a Purchaser from objecting to the title as shown by the abstract. Also conditions as to contents of leases, stamps, and registration. See Forms under Sec. III, "Matters arising on the Abstract," supra.*

Identity, &c.

7. *Here will follow conditions relating to identity, land tax, tithe rentcharge, apportionments, restrictive covenants already affecting the land, &c. See Forms under Sec. IV, "As to Identity and other Matters arising on the particulars,"* and see *Sec. IX as to registered land.*

Form of conveyance.

8. *See Forms as to the form of the conveyance, restrictive covenants to be imposed, &c., under Sec. V, "As to the Conveyance and its Contents," and as to the mode of completion in the case of registered land, see Sec. IX.*

Preparation of conveyance.

9. The conveyance (*p*) to the [each] Purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be delivered at the office of the solicitors of the Vendor[s] at least —— days before the day fixed for completion

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Commencement of title.

(*o*) See the forms under Sect. II, "As to the Commencement of Title and Contents of the Abstract," *supra*, where the necessary provisions for cases of leaseholds, land subject to manorial incidents and particular classes of property, &c., will be found. It is generally advisable to state the date when and the nature of the instrument with which the title is to commence: Dart, 7th ed., 329-331. In the case of a voluntary settlement the fact must be mentioned: *Re Marsh and E. Granville* (1883), 24 Ch. D. 11; 53 L. J. Ch. 81.

Leaseholds.

(*p*) The word "conveyance" is applicable to leaseholds as well as to freeholds, but if preferred "assignment" may be used in the case of leaseholds.

Costs of conveyance, &c.

This condition following the general practice in ordinary cases leaves the vendor to bear the expense of procuring the concurrence of necessary parties, and of perusal and execution by them; and also the cost of matters essential to the validity of the conveyance (see Dart, 7th ed., 714), the principle being that the vendor ought to bear the expense of matters which have to be attended to by the vendor's solicitor. But the purchaser bears the cost of registration (*ib.*).

When it is desired to throw as many of these expenses as the L. P. Act 1925, allows (see ss. 42-43) on the purchaser (see *Re Willett and Argenti* (1889)

of the sale for execution by the Vendor[s] and other necessary parties (if any), and the draft of such conveyance for perusal and approval on behalf of the Vendor[s] and other necessary parties (if any) shall be left at the said office at least seven days before delivery of the engrossment. Delivery of draft.

10. *Insert conditions, if required, as to the retention of documents, production, &c.; see Forms, "As to Documents," p. 312, and, in the case of registered land, as to the land certificate: Sec. IX, supra.* Documents.

11. *Add conditions as to compensation or no compensation for errors in description, &c.; see Forms, "As to Compensation and Miscellaneous Matters," p. 315, supra.* Compensation, &c.

12. (1) If the [any] Purchaser shall neglect or fail to comply with any of the above conditions, his deposit money shall be Power to re-sell on default.(q)

W. N. 66 *Re Sander and Walford* [1900], 83 L. T. 316), the condition should run as follows:—

The conveyance to the [each] Purchaser, and every other assurance, act and thing (if any) required by him for perfecting or completing the Vendor's title, or otherwise (not relating to matters, the costs of which, notwithstanding any stipulation to the contrary, are by statute required to be borne by the Vendor), shall be prepared, made, and done by and at the expense of the [such] Purchaser, who shall also bear the expense of perusal on behalf of and execution by all parties except the Vendor[s], and the engrossment of every such conveyance and assurance shall be, &c. [*continue as above*]. Form when all possible costs thrown on purchaser.

It is no longer possible to impose on a purchaser the costs of— What a vendor cannot contract out of.

(1) obtaining a vesting order, the appointment of trustees of a settlement, or of a conveyance on trust for sale: L. P. Act, 1925, s. 42 (2) (*a*);

(2) the preparation, stamping of a conveyance on trust for sale, or of a vesting instrument for bringing into force the provisions of the S. L. Act, 1925: *ib.*, s. 42 (2) (*b*);

(3) tracing or getting in a legal estate: *ib.*, s-s. 3;

(4) clearing equitable interests protected by registration under the L. C. Act, 1925: *ib.*, s. 43.

Still such a condition would, in terms, include the costs of a disentailing assurance and the surrender of mortgages, and might involve the purchaser in great and unknown expense, hence it is unfair and depreciatory and should not be used in ordinary cases. As a general rule a disentailing assurance, which only relates to equitable interests, will not come on the title. Where land is settled, title cannot be made until a vesting instrument has been executed. If a tenant in tail in possession purports to sell his entailed interest, the contract will extend to the fee simple or term of years absolute: *ib.*, s. 43 (4) (iii), and the vendor will have to get in the legal estate at his own expense: *ib.*, s. 43 (3). The same principle applies to a mortgagee having power to convey a legal estate, and to a person entitled to an equitable interest capable of subsisting as a legal estate: *ib.*, s. 43 (4) (i) and (ii). As to registered land see L. R. Act, 1925, s. 110. Forfeiture of deposit and re-sale.

(*q*) This condition is more stringent than that given in the General Conditions

forfeited to the Vendor[s], who may with or without notice re-sell the premises [the Lot or Lots in respect whereof default occurs] without previously tendering a conveyance to the Purchaser [*or* the defaulter at this sale].

(2) Any re-sale may be made by auction or private contract at such time, subject to such conditions and in such manner generally as the Vendor[s] may think proper.

(3) If thereby the Vendor[s] shall incur a loss by reason of diminution in price or expenses incurred, or both, after taking into account the deposit,(*r*) the Purchaser [*or* the defaulter at this sale] shall pay to the Vendor[s] the amount of such loss as liquidated damages.(*s*)

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of 1925. Even where there is no such condition as above, the deposit would unless the court, under L. P. Act, 1925, s. 49, otherwise directs, be forfeited: *Howe* v. *Smith* (1884), 27 Ch. D. 89; 53 L. J. Ch. 1055; *Cornwall* v. *Henson* [1900], 2 Ch. 298; 69 L. J. Ch. 581 (as to whether the principle applies also to further instalments, see *S. C.*); *Hall* v. *Burnell* [1911], 2 Ch. 551; 81 L. J. Ch. 46; *Kilmer* v. *B. C. Orchard Lands* [1913], A. C. 319; 82 L. J. P. C. 77; and the vendor might recover the expenses of the abortive sale (*Essex* v. *Daniell* (1875), L. R. 10 C. P. 538); or might re-sell and claim the difference in price by way of damages (*Noble* v. *Edwardes* (1877), 5 Ch. D. 378; see, however, 43 Sol. J. 601); but the vendor may not retain any part of the purchase-money, which has been paid on account, as security for a possible loss on the re-sale of the property: *Harrison* v. *Holland* [1922], 1 K. B. 211; 91 L. J. K. B. 337. The deposit may be forfeited after an order for specific performance, which is not obeyed, has been obtained: *Griffiths* v. *Vezey* [1906], 1 Ch. 796; 75 L. J. Ch. 462; see also *Shuttleworth* v. *Clews* [1910], 1 Ch. 176; 79 L. J. Ch. 121. But if the vendor makes default the purchaser can recover the deposit, and other instalments paid, and is entitled to a lien: *Rose* v. *Watson* (1864), 10 H. L. C. 672; 33 L. J. Ch. 385; *Levy* v. *Stogdon* [1899], 1 Ch. 5; 68 L. J. Ch. 19; *Powell* v. *Marshall & Co.* [1899], 1 Q. B. 710; 68 L. J. Q. B. 477; *Whitbread & Co., Ltd.* v. *Watt* [1902], 1 Ch. 835; 71 L. J. Ch. 424; *Kitton* v. *Hewett* [1904], W. N. 21; and as to the power of a purchaser to rescind, see *Stickney* v. *Keeble* [1915], A. C. 386; 84 L. J. Ch. 259; *Re Bayley and Shoesmith* [1918], 87 L. J. Ch. 626.

Return of deposit.

(*r*) See *Ockenden* v. *Henly* (1858), 4 Jur. N. S. 999; 27 L. J. Q. B. 361. Where no deposit has in fact been paid, and the vendor re-sells at a loss, he is entitled to receive the agreed amount of the deposit, even though it exceeds the sum lost on the re-sale: *Dewar* v. *Mintoft* [1912], 2 K. B. 373; 81 L. J. K. B. 885. The court has power either in a specific performance action or in an action for the return of a deposit to order the repayment thereof: L. P. Act, 1925, s. 49.

Liquidated damages.

(*s*) Whether liquidated damages will be enforced or treated as a penalty, see *Wallis* v. *Smith* (1882), 21 Ch. D. 243; 52 L. J. Ch. 145; *Barton* v. *Capewell Co.* [1893], 68 L. T. 857; *Clydebank Engineering Co.* v. *Don Jose Ramos, &c.* [1905], A. C. 6; 74 L. J. P. C. 1; *Pye* v. *British Automobile Syndicate* [1906], 1 K. B. 425; 75 L. J. K. B. 270; *Webster* v. *Bosanquet* [1912], A. C. 394; 81 L. J. P. C. 205; *Kilmer* v. *B. C. Orchard Lands, Ltd.* [1913], A. C. 319; 82 L. J. P. C. 77; *Dunlop Pneumatic Tyre Co.* v. *New Garage* [1915], A. C. 79; 83 L. J. K. B. 1574; *Steedman* v. *Drinkle* [1916], 1 A. C. 275; 85 L. J. P. C. 79. As to the measure of damages, see *Keck* v. *Faber* [1916], 60 S. J. 253.

(4) On any such re-sale by auction the property [Lot or Lots offered for sale] may be bought in, and all expenses consequent on an unsuccessful attempt to re-sell shall be forthwith paid to the Vendor[s] by the defaulter at this sale.

MEMORANDUM.

Memorandum for signature.

BE it remembered that at the sale by auction this —— day of ——, 19—,(*t*) of the property mentioned in the annexed particulars of sale, —— of —— was the highest bidder for the premises [Lot ——], and was declared the Purchaser thereof, subject to the above conditions, at the price of £——, and has paid the sum of £—— by way of deposit, and agrees to pay to ——,(*u*) the Vendor[s], according to the above conditions, the balance of the said purchase-money [including the valuation money]; and the Vendor and Purchaser hereby agree to complete the sale in accordance with the above conditions of sale.

Purchase-money ..	..	£——
Less deposit ..	..	£——
Balance ..	..	£——
[Valuation money..	..	£——]
Total		£

As agents for the Vendor[s] we hereby confirm the sale and [as stakeholders *or* as agents for the Settled Land Act trustees](*v*) acknowledge the receipt of the above deposit.

Abstract of title to be sent to ——.

Memorandum to be signed by Vendor and Purchaser as to any Lot which may not be sold at the auction but is afterwards bought privately.

Memorandum where property is sold privately.

MEMORANDUM, made this —— day of —— 19—, whereby C. D., of, &c. (hereinafter called the Vendor), agrees to sell,

(*t*) It is important to insert the correct date: *Van Praagh* v. *Everidge* [1903], 1 Ch. 434; 72 L. J. Ch. 260. This is an "estate contract" which can, if desired, be protected by registering a land charge under L. C. Act, 1925. In the case of registered land, it can be protected either by a notice on the register or by a caution. The Precedent only creates an "equitable interest," though the conveyance will transfer a "legal estate." "Estate contract."

(*u*) The vendor must be named or otherwise sufficiently described: Dart, 7th ed., 235.

(*v*) There must be no stakeholders if the vendor is in a fiduciary position; see first note to clause 3 of this Precedent. Stakeholders.

As to the auctioneer's commission, see *Skinner* v. *Andrews* [1910], 54 Sol. J. 360. Auctioneer's commission.

and A. B., of, &c. (hereinafter called the Purchaser) agrees to purchase, the property [Lot ——], as described in the above particulars, for the sum of £——, of which the sum of £—— has been paid by the Purchaser to the Vendor (*or as the case may be*) by way of deposit. AND whereby it is agreed that this sale is made subject to the above conditions so far as the same [relate to the said Lot and] are applicable to a sale by private contract.(*w*)

(Signed) C. D.
A. B.

No. II.

CONDITIONS *on* SALE *by the* COURT.(*a*) (*Equitable interest in Legal Estate.*)

Biddings. 1. No person is to advance less than £—— at each bidding, [nor retract a bidding].(*b*)

Reserve. 2. The sale is subject to a reserve bidding [for each Lot] which has been fixed by the Judge to whom this action is assigned [and the right is reserved to bid up to such reserve price].

Signature and notices. 3. The [Each] Purchaser shall at the time of sale subscribe his name and address to his bidding [in the bidding paper], and the abstract of title (if any) and all written notices and communications and summonses shall be deemed duly delivered to and served upon the [a] Purchaser, by being left for him at such address unless and until he is represented by a solicitor.

Deposit. 4. The [Each] Purchaser shall at the time of sale pay a deposit of £— per cent. on the amount of his purchase-money to ——, the person appointed by the said Judge to receive the same.

Certificate of result. 5. One of the Masters attached to the Chambers of the said Judge will, after the sale, proceed to certify the result, and —— day, the —— day of ——, 19—, at —— of the clock in the —— noon, is appointed as the time at which the

(*w*) This memorandum as to private sales is also applicable after an auction sale by the court has failed, but in the latter case it may be necessary to make the agreement conditional on the consent of the court being obtained.

(*a*) See R. S. C., 1883, O. 51, rr. 1—6 and 6A; *ib.*, O. 55, rr. 34, 75; *ib.*, Appx. L, No. 15 (but the form in the appendix is in some respects obsolete and is not used as it stands). See also generally the notes to Precedent IA, *supra*. If there has been no order for sale then the sale may be made out of court with the leave of the court: Precedent VIII of Agreements for Sale, *infra*.

(*b*) The words in large square brackets throughout this Precedent are not given in the official Form.

Purchaser[s] may, if he [they] think[s] fit attend by his [their] solicitors at the Chambers of the said Judge at the Royal Courts of Justice, London, to settle such certificate.(*c*) The certificate will then be settled, and will in due course be signed and filed and become binding without any further notice or expense to the Purchaser[s].

Delivery of abstract.

6. (1) The Vendor shall, within [eight] days (*d*) after such certificate has become binding deliver to the [each] Purchaser or his solicitor an abstract [*if the title is registered with an absolute or good leasehold title, and no abstract is to be furnished, substitute:* "an authority in writing to inspect the register" *and leave out references to abstract*] of the title to the property [Lot or Lots purchased by him] subject to the stipulations contained in these conditions.

Requisitions.

(2) The [Each] Purchaser [whether his abstract is delivered within such eight days or not] shall within fourteen (*e*) days after the actual delivery of his abstract, deliver at the office of ——, solicitor, at ——, in the County of ——, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract (if any) and upon the expiration of such last-mentioned time, the title shall be considered as approved of and accepted by such [the] Purchaser subject only to such objections and requisitions (if any).

(3) All objections and requisitions not included in any statement sent within the time aforesaid shall be deemed to have been waived, and an abstract, though in fact imperfect, shall be deemed perfect, except for the purpose of any further objections or requisitions which could not be taken or made on the information therein contained.

(4) Any answer to any objection or requisition shall be replied to in writing within ten days after the delivery thereof, and if not so replied to shall be considered satisfactory.

(5) Time shall be deemed in all respects of the essence of this condition.

(6) If the [any] Purchaser shall take any objection or make any requisition which the Vendor[s] is [are] advised not to

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(*c*) As to the power to refuse to grant a certificate, see *Re Clayton, Ltd.* [1920], 1 Ch. 257; 89 L. J. Ch. 188.

(*d*) In sales under the court a time must be fixed for delivery of the abstract: R. S. C., 1883, O. 51, r. 2.

(*e*) "Four" days is the time given in O. 51, r. 2; it is apprehended that this is a mistake for "fourteen."

remove or comply with, or if any question shall arise as to the conveyance, the Vendor[s], with the sanction of the Judge, shall be at liberty, by notice in writing to be delivered to the [such] Purchaser or his solicitor, and notwithstanding any intermediate negotiation, to rescind his contract for sale upon such terms as the Judge shall approve.

(7) The Purchaser [whose contract is so rescinded] shall thereupon be entitled to receive back his deposit, and shall accept the same in discharge of all claims for costs or otherwise, and shall forthwith return all abstracts and papers in his possession belonging to the Vendor[s].

[(8) For the purposes (*f*) of these conditions —— being the person[s] having the conduct of the sale [*or otherwise as the case requires*] shall be deemed to be the Vendor[s].]

Payment into court.

7. (1) The [Each] Purchaser shall, under a direction signed by the Master for that purpose to be obtained by him, or in case of his neglect under an order for that purpose to be obtained by the Vendor[s] at the cost of the Purchaser upon application at the Chambers of the said Judge, pay the amount of his purchase-money (after deducting the amount paid as a deposit) [together with the amount of the valuation (if any) under these conditions (*g*)] into Court to the credit of this action —— v. ——, —— 19—, No. —— ["Proceeds of the sale of ——"], on or before the —— day of ——, 19—, and if [from any cause whatever] the same is not so paid, then the Purchaser [making default] shall pay interest on the balance of his purchase-money, [including the amount of such valuation] at the rate of £— per cent. per annum, from the said —— day of ——, 19—, to the day on which the same is actually paid [deducting property tax.(*h*)]

(2) [If the [any] Purchaser makes default in such payment the cost of any application by the Vendor[s] to enforce payment shall be borne by the [such] Purchaser unless the Judge shall otherwise direct.]

(*f*) The court is the vendor, but for the purposes of the sale one of the parties is given the conduct thereof.

Valuation.

(*g*) Where the timber or fixtures, &c., are sold at a valuation this condition will be preceded by Form No. 4, p. 242, *supra*, or one of the other Forms under s. I, *supra*, which may require slight alterations.

(*h*) In sales under the court the conditions usually provide that the purchaser may deduct property tax: Dart, 7th ed., p. 1170 (but see *dictum* of Lindley, L.J., *Goslings and Sharpe* v. *Blake* (1889), 23 Q. B. D. at p. 330; 58 L. J. Q. B. 446). See also Dan. Ch. Pract., 8th ed., 956; Dan. Ch. F, 6th ed., 651.

(3) Upon payment of the balance of his purchase-money [and the amount of such valuation] in manner aforesaid, the [each] Purchaser shall be entitled to possession, or to the rents and profits of the property [Lot or Lots purchased by him], as from the —— day of ——, 19—, down to which time all outgoings shall be paid by the Vendor[s] [and such rents, profits, and outgoings shall if necessary be apportioned by the Judge at Chambers].

Special conditions.(*i*)

8. [*Add conditions, if required, as to the commencement of title, particular points arising on the abstract, identity, the form of conveyance, &c., as in Precedent* IA, *using the Forms under Sec. VIII, "Special Conditions on Sales by the Court," or the Forms applicable to ordinary sales, or the General Conditions of* 1925, *by reference thereto, which must in some cases be adapted.*]

Preparation of conveyance.

9. *Insert clause* 9 *of Precedent* IA, *supra.*

Documents.

10. *Insert conditions as to the retention of documents, production, &c.; see Forms under Sec. VI, "As to Documents," p.* 312, *supra.*

Compensation for errors

11. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement shall not annul the sale or entitle the [any] Purchaser to be discharged from his purchase but [if pointed out before completion and not otherwise] compensation shall be made to or by the [a] Purchaser as the case may be, and the amount of such compensation shall be settled by the Judge in Chambers [but measurements and quantities shall be deemed correct and shall not be the subject of compensation if incorrect].

Re-sale on default.

Lastly.—If the [any] Purchaser shall not pay his purchase-money at the time above specified or at any other time which may be named in any [direction or] order for that purpose, and in all other respects perform these conditions [his deposit money shall be forfeited to the Vendor[s], and] an order may be made by the said Judge upon application at Chambers for the re-sale of the property [Lot or Lots purchased by such Purchaser] and for payment by the Purchaser [him] of the deficiency (if any), in the price which may be obtained upon such re-sale, and of all

(*i*) The conveyance will be made by the person in whom the legal estate is vested. If this cannot be arranged it must be effected by a vesting order or by an order appointing a person to convey. The consents, in writing, of incumbrancers who agree to be bound by the sale, should be given in the prescribed form. Payment into court operates as a complete receipt: L. P. Act, 1925, s. 203 (1). This with the order for sale (*ib.*, s. 204), will bind the beneficial interests. And see L. P. Act, 1925, s. 2 (1) (iv). Conveyance and receipt.

costs and expenses occasioned by such default [after giving credit for the deposit].(*j*)

No. III.

CONDITIONS *on* SALE *by* TENDER *under the* COURT.

(*Equitable interest in Legal Estate.*)

Filling up form of tender.

1. Each person tendering shall fill up and sign with his name and address the form of tender subjoined to these conditions, and send the same with the foregoing particulars and these conditions remaining attached thereto in a closed cover to Messrs. ——, of ——, on or before the —— day of —— next.(*a*)

Cheque for deposit.

2. Enclosed with the tender the person tendering shall send a crossed cheque payable to the order of Messrs. ——, for a sum by way of deposit equal to £— per cent. on the amount of his tender.

Acceptance of tenders.

3. The Vendors do not bind themselves to accept the highest (*b*) or any tender.

Notice of acceptance.

4. Before the —— day of —— 19—, notice of acceptance will be given to the person whose tender is accepted, and the cheques or the amounts received under the cheques of other persons whose tenders are not accepted will be returned to them.

Master's certificate.

5. (1) The master will on —— day the —— day of ——, 19—, at —— of the clock in the —— noon, proceed to certify the name of the person whose tender is accepted, and such person may, if he thinks fit, attend by himself or his solicitor at the Chambers of the Judge at the Royal Courts of Justice, London, to settle such certificate.

(2) The certificate will then be settled and will in due course be signed and filed and become binding without further notice or expense to the Purchaser.

Delivery of notices.

6. The abstract of title and all written notices and communications and summonses shall be deemed duly delivered to and served upon the Purchaser by being left for him at the address mentioned in his tender unless and until he is represented by a solicitor.

[*Add other conditions of sale as in last Precedent.*]

(*j*) The Purchaser will sign a bidding paper, but no other memorandum is required from him, and see L. P. Act, 1925, s. 40 (2).

(*a*) See notes to Prec. IA, *supra*.

(*b*) As to the effect of a tender of £—— beyond the amount of any other tender, see *South Hetton, &c., Co.* v. *Haswell, &c., Co.* [1898], 1 Ch. 465; 67 L. J. Ch. 238.

Effect of tender.

FORM OF TENDER.

I ——, of ——, do this —— day of —— 19—, hereby tender the sum of £—— for the purchase of the property [Lot —] described in the above particulars, and I enclose herewith a cheque for the sum of £——, being — per cent. on the amount of such purchase-money, and in case the Master certifies me to be the Purchaser I agree to purchase such property [Lot —] at the said price of £—— in accordance with the above conditions and to pay the balance of the purchase-money [and also the valuation money (if any)] and to complete the purchase in accordance with the above conditions.

[*Signature.*]

Witness.

[*Signature and address of witness.*]

No. IV.

CONDITIONS *on* SALE *of* LIFE *and* REVERSIONARY INTERESTS, (*Equitable Interests*) *and a* POLICY *of* LIFE ASSURANCE *described in the* PARTICULARS *as follows :—*

LOT 1.—*The income to arise during the life of A. B., a person aged —— years or thereabouts, from the following investments, namely* [state them], *representing the trust fund settled by a Marriage Settlement, dated the —— day of ——.*

LOT 2.—*One-fourth undivided share in reversion expectant on the death of C. D. (aged —— years and upwards) in the following investments and property* [state particulars] *now representing the residuary estate of X. Y., late of, &c., deceased, who died on the —— day of —— 19—,(a) subject to the payment of a share of any expenses to be hereafter incurred by the trustees in relation to the residuary estate.(b)*

(*a*) This is to show that the testator died after the commencement of the Fin. Act, 1894. In the case of reversionary interests purchased or mortgaged before the 30th April, 1909, the new death duties imposed by the Fin. (1909-10) Act, 1910, do not apply : s. 64. Fin. Act, 1914, s. 16; Fin. Act, 1919, s. 29, and Fin. Act, 1925, s. 22, exempt interests sold or mortgaged before 11th May, 1914, 30th April, 1919, 28th April, 1925, from the increases of death duties imposed by those Acts. Duties.

(*b*) It is assumed that all the death duties have been paid, and that no further duties will become payable on the death of the tenant for life.

LOT 3.—*A policy of assurance on the life of E. F. (aged —— years) for £——, effected with the —— Assurance Society, dated the —— day of ——, and numbered —— subject to the payment of an annual premium of £——.*

1, 2, 3 and 4. (*As in Precedent* IA, *supra, omitting the provisions as to rents, profits, and outgoings in clause* 3.)

As to the life interest forming Lot 1.

5. On the completion of the purchase of Lot 1, the Purchaser shall be entitled to the same as from the —— day of —— next, and for this purpose the income for the then current half-year shall be apportioned between the Vendor and Purchaser. [The Vendor will furnish to the Purchaser a statutory declaration by —— as to the age of the above-named A. B., which shall be accepted by him as sufficient evidence.]

As to the reversionary interest forming Lot 2.(*c*)

6. On the completion of the purchase of Lot 2, the Purchaser shall be entitled to all benefit and advantage thereof as from the day of sale. [The Vendor will furnish, &c., *statutory declaration as to age of C. D., as in preceding condition.*(*d*)]

Recitals in a certain deed to be evidence.

7. A Deed dated the —— day of —— (being an appointment of a new trustee of the Will of the testator X. Y. mentioned in the particulars) contains recitals to the effect that all the real and personal estate of the testator had been sold and converted into money; that out of the proceeds all the testator's funeral and testamentary expenses and debts, and the death duties payable in respect of his estate on his death, and the legacies bequeathed by his Will had been paid, and that the residue consisted of the investments and property stated in the particulars. The said recitals shall be accepted by the Purchaser of Lot 2 as conclusive evidence of the facts and matters therein stated, and he shall require no further or other evidence thereof.

As to policy forming Lot 3.

8. Upon the completion of the purchase of the policy of assurance comprised in Lot. 3, the Purchaser shall be entitled to all benefit and advantage thereof as from the day of sale, and he shall pay any premium which shall become payable in respect thereof between the day of sale and the completion of the purchase.

Evidence as to validity of policy.

9. The receipt for the last premium which became due on the said policy before the day of sale shall be deemed sufficient evidence that the said policy is in full force, and the Purchaser

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(*c*) A condition throwing death duties, where payable, on the purchaser is unnecessary: *Re Repington* [1904], 1 Ch. 811.

(*d*) The declarations will not be required if the certificates of birth can be produced.

of Lot 3 shall not require any evidence of the age of E. F. mentioned in the particulars, or that his age was proved to the satisfaction of the assurance office, or any evidence in support of the statements on which the said policy was granted.(*e*)

Vendor to execute assignments.

10. On the completion of the purchase of each Lot, the Vendor shall execute a proper assignment thereof to the Purchaser thereof, such assignment to be prepared by and at the expense of the Purchaser, and to be left by him at the office of the Vendor's solicitor at least three days before the day fixed for the completion of the purchase.(*f*)

11. *Insert, if required, special conditions "As to documents." See Forms under Sec. VI, supra.*

Compensation for mistakes.

12. If any mistake shall be found in the particulars as to the age of any person, or as to the amount or description of any trust fund or property, or in any other respect, the same shall not annul the sale, but compensation shall be made in respect thereof, the amount of such compensation to be settled in case of difference by two referees, one to be appointed by each party, or by an umpire to be appointed by the two referees before they proceed in the reference. But this condition is without prejudice to the Vendor's right to rescind under these conditions.

13. Power to re-sell (*as in Precedent* IA, *clause* 12, *supra*).

MEMORANDUM (*as in Precedent* IA, *supra*).

No. V.

CONDITIONS *of* SALE *of* STANDING TIMBER.(*a*)

Highest bidder to be the purchaser.

1. The highest bidder shall be the Purchaser; and if any dispute shall arise between two or more bidders, the Lot in dispute shall either be put up again at the last undisputed

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Death of assured.

(*e*) Where a contract for the sale of a life policy was entered into in the belief that the assured was alive, but he was in fact dead, the vendor was entitled to have the transaction set aside notwithstanding that it had been actually completed: *Scott* v. *Coulson* [1903], 2 Ch. 249; 72 L. J. Ch. 600. Generally as to policies of life assurance, see Goodeve, Pers. Property, 5th ed., 146 *et seq.*; Withers on Reversions, p. 173, *et seq.*

Notices and enquiries.

(*f*) As to notices and enquiries respecting life interests and reversions, see L. P. Act, 1925, ss. 137-8; as respects such interests in registered land, see L. R. Act, 1925, s. 102.

Death duties.

Sale of timber by trustees.

(*a*) Death duties are not payable on timber until it is sold where the death occurred after the 30th April, 1909: Fin. Act, 1912, s. 9. Timber could not be sold separately from the land by trustees unless expressly authorised (*Cholmeley* v. *Paxton* (1825), 3 Bing. 207; 4 L. J. (O. S.) C. P. 41; *Cockerell* v. *Cholmeley* (1827), 3 Russ. 565; *Re Duke of Rutland's S. E.* [1900], 2 Ch. at

bidding, or the auctioneer may determine the dispute and may also refuse any bidding, and withdraw, consolidate, or divide any Lots.

Purchaser to take each lot according to description and with all faults.

2. (1) The Vendor shall not be answerable for the description of any Lot.

(2) The Purchaser of each Lot shall take it with all faults, errors of description or number, and subject to all risks.

(3) No person shall advance a less sum at each bidding than the sum fixed by the auctioneer, or retract a bidding, and the auctioneer may bid once or oftener for each Lot for the benefit of the Vendor.

Payment of purchase-money.

3. (1) The Purchaser of each Lot shall at the close of the sale, or of his bidding if required, pay to the auctioneer a deposit of 20 per cent. in part payment of his purchase-money, and give his name and address, and shall also, if so required, sign an agreement to complete the purchase according to these conditions.

(2) Each Purchaser shall give to the Vendor a bill payable at seven months for the unpaid purchase-money for the oak, and a bill payable at four months for the unpaid purchase-money for the remainder of the timber included in the Lot purchased by him.

(3) Each Purchaser shall, if required by the Vendor or his agent, provide a responsible person or persons to guarantee such bills, and such bills shall be prepared and stamped at the cost of the Purchaser giving the same, and shall be given to the auctioneer at the close of the sale, or within one week from the day of sale.

(4) No Purchaser shall enter on his Lot or Lots, or commence cutting timber, until a bill shall have been given by him as hereinbefore provided, together with such further security as the Vendor may require, and every Purchaser shall give such further security as the Vendor may from time to time require.

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p. 210; 69 L. J. Ch. 603); but now trustees for sale and personal representatives have the statutory powers of a tenant for life.

Tenant for life and timber.

Where a tenant for life is impeachable for waste he can cut and sell timber with the consent of the S. L. Act trustees or under an order of the court, but three-fourths of the proceeds must be set aside as capital money: S. L. Act, 1925, s. 66. The court can confirm a title where the proceeds of sale of timber or fixtures have been wrongly paid to a tenant for life and the money is made good to the trust with interest: S. L. Act, 1925, s. 49 (3).

Contract for sale of timber not required to be in writing, &c.

A sale of growing timber to be taken away as soon as possible by the purchaser is not a contract within L. P. Act, 1925, s. 40: *Marshall* v. *Green* (1875), 1 C. P. D. 35; 45 L. J. C. P. 153.

(5) If any Purchaser commits any breach of the foregoing conditions he shall be deemed a trespasser, and liable to pay to the Vendor treble the amount of his purchase-money for such Lot or Lots as liquidated damages.

(6) The Purchasers shall respectively pay to the auctioneer sixpence in the pound in addition to the purchase-money for fees.

How the timber is to be felled and removed.

4. (1) The trees shall be felled with as much care as possible (the bark and wood thereof being properly stacked) and removed only by the usual roads.

(2) The Purchasers shall be accountable for all damage done to any of the remaining timber, or otherwise to the estate of the Vendor, or to cattle on the land.

(3) No tree shall be rooted up without the permission of the Vendor or his agent.

(4) Every Purchaser before the trees are thrown shall sever and cut off such boughs as are necessary to prevent damage.

(5) If any workman shall be objected to by the Vendor, the Purchaser employing such workman shall, if required by the Vendor or his agent, discharge such workman.

(6) Each Purchaser shall forfeit £5 for every tree or sapling cut which has not been marked for sale.

(7) No dogs shall be taken on any part of the estate, either by the Purchasers or their agents.

(8) All the oak timber shall be removed from the land during dry or frosty weather, having regard to the season, on or before the —— day of ——, 19—, and the remainder of the timber shall be removed and cleared away before the —— day of ——, 19— [except Lots ——, which shall be removed before the —— day of ——, 19—].

(9) All Lots remaining after the time before mentioned shall be forfeited to the Vendor.

(10) Each Purchaser whose purchase-money does not exceed £10 shall pay for the same on or before the —— day of ——, 19—.

(11) The whole of the tops shall be properly bundled immediately after the trees are felled, and shall be removed from the land within one month after such felling, and if not removed as aforesaid shall be forfeited to the Vendor.

When the timber is to be carried away, and how damage to be paid for.

5. (1) No Purchaser shall enter (*b*) on any arable land after the same is sown with corn, or upon any grass land after the

(*b*) See *Jones* v. *Earl of Tankerville* [1909], 2 Ch. 440; 78 L. J. Ch. 674.

same is laid up until mown, nor upon any young grass, turnips, or other crops, without the consent of the Vendor, or of the respective occupiers, until the crops are cleared.

(2) The whole of the timber shall be removed only by the roads and through the gaps appointed by the Vendor or his agent.

(3) No Purchaser shall sink pits for the conversion of his timber on the estate without the consent of the Vendor or his agent.

(4) Any injury or damage done to the property of the Vendor or his tenants shall be ascertained by the auctioneer or by any person whom he may appoint, whose award shall be final.

(5) The specified number of trees mentioned in the particulars or catalogue shall be taken as correct.

(6) The whole of the timber shall be felled by the respective Purchasers at their own expense [except Lots ——, which shall be felled by and at the expense of the Vendor].

Condition as to paying for and clearing away pollards, saplings, &c.

6. (1) The Purchasers of the pollards, saplings, poles, hurdlewood, and underwood, shall pay for the same at the close of the sale.

(2) The pollards, saplings, and poles shall be cleared off the premises by the —— day of ——, and the hurdlewood and underwood by the —— day of ——.

(3) The Purchasers of the hurdlewood shall not cut any saplings that are marked [nor any saplings that are, in the opinion of the Vendor or his agent, likely to become trees].

Provisions in case of bankruptcy of purchaser before payment of purchase-money, &c.

7. (1) No part of the timber, trees, wood, or bark shall be in anywise liable to be seized or taken by any person other than the Vendor for the debts, or other engagements, if any, of the Purchasers, until the whole of the purchase-money is paid, and satisfaction is made for damages as aforesaid, notwithstanding any bankruptcy of or any other thing whatsoever affecting the Purchasers or any of them.

(2) The carriages used shall have broad wheels, and the usual roads shall not be deviated from except with the consent of the Vendor or his agent.

Provisions for purchaser refusing to comply with previous conditions.

8. If any Purchaser shall—

(*a*) refuse or neglect to comply with the foregoing conditions, or

(*b*) attempt to remove any of the timber from the land before the purchase-money is paid or security given as hereinbefore provided,

then (in addition to the provisions of Condition 3) his deposit money shall be forfeited to the Vendor, who shall be at liberty

by himself or his agent to follow and stop the timber wherever it may be found, and to re-sell the same by public auction or private contract, and the deficiency, if any, together with all expenses attending the re-sale, shall be made good by the defaulter or defaulters at this present sale, and be recoverable as liquidated damages, and any increase of price shall belong to the Vendor.

[*Note.—A Memorandum as in Prec.* 1A, *supra, is frequently added, but this is not essential.*]

Part IV.

PRECEDENTS OF AGREEMENTS FOR SALE BY PRIVATE TREATY.

No. I.

VARIATIONS *of the* General Conditions *of* 1925, *applicable to Sales of* Freeholds, Enfranchised Land *and* Leaseholds (*otherwise than by the court*), *to be prefixed as part of the* Special Conditions. (*Equitable Interest in Legal Estate.*)(*x*)

Note.—The General Conditions of 1925 are applicable to sales by private treaty but the words "so far as applicable to a sale by private treaty" should be added to the Memorandum of the contract where so directed. The variations will be found in Prec. No. 1, Part III, *supra*.

No. Ia.

AGREEMENT *for* Sale *applicable to* Freeholds, Enfranchised Land *and* Leaseholds.(*a*) Variations *where the title is* Registered. (*Equitable Interest in legal estate.*)

Parties. Agreement to sell and purchase.

AN AGREEMENT made the —— day of —— 19—, Between A. B., of &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

Whereby it is agreed as follows :—

Freeholds.

1. The Vendor shall sell and the Purchaser shall purchase at the price of £——, the property hereinafter mentioned [and the fee simple thereof in possession],

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(*x*) After 1925 contracts for sale will generally be made by using the General Conditions of 1925, but, for the purposes of annotation, the full forms are given *infra*.

(*a*) As a rule Precedent I, *supra*, will be used. See notes generally to Precedent Ia, "General Conditions," p. 371, *supra*. Some of the Forms under the title "Special Conditions," see List, pp. 241–325 & 331, 332, *supra*, will require to be slightly modified when used on a sale by private treaty, *e.g.*, for "date of sale" say "date hereof," instead of referring to the "Particulars" refer to "the Schedule hereto," unless the General Conditions of 1925 are used, when the particulars will be prefixed.

Manorial incidents.

The land need not have been copyhold to be subject to manorial incidents, but, whether or not formerly copyhold, the incidents can be extinguished under L. P. Act, 1922, Pt. VI. At the end of ten years from 1st January, 1926, all manorial incidents will be automatically extinguished : *ib.*, ss. 138 (1), 140, unless an order is made under s. 138 (1) (i) extending the ten years in the case of any particular manor. Such orders will, if made, be published in the "London Gazette."

[*Add in the case of land subject to manorial incidents*, but subject to the manorial incidents unless the same are extinguished at the expense of the Purchaser before completion in manner hereinafter provided, the land having formerly been copyhold of the Manor of —— in the County of ——] Land subject to manorial incidents.

[*Or in the case of legal rentcharges* held in perpetuity *or* held for a term of —— years from the —— day of ——.] Legal rentcharges.

[*Or in the case of leaseholds*,(*b*) held under a Lease [Underlease] dated the —— day of —— for the term of —— years from the —— day of ——] *In the case of an underlease add* [except the last —— days thereof.] Leaseholds.

At the yearly rent of £——, and all the term and interest granted by that Lease [Underlease] subject to the lessee's [underlessee's] covenants and the conditions therein contained and]

Subject to the tenancies (*c*) [*or* subject to the leases mentioned in the —— Schedule hereto], [and to the incumbrances mentioned in the —— Schedule but otherwise free, &c.,] but free from incumbrances, that is to say : Tenancies.

ALL THAT, &C.(*d*) ——, which premises are more particularly Parcels.

A contract for the sale of a legal estate can be registered as a land charge under L. C. Act, 1925. This will not be required if the vendor's solicitors are well known and completion is not to be delayed, but it is more important in the case of private sales than on sales by auction, for though notice of the contract will not be a protection against a subsequent purchaser who acquires the legal estate without fraud, still the publicity of an auction will generally be sufficient to prevent a vendor from attempting to deal with land which he has sold. In the case of registered land the contract can be protected by a priority notice or caution on the register. Registration of "estate contracts."

(*b*) If there are any onerous covenants, they must be disclosed ; the purchaser must be given a fair opportunity of ascertaining for himself the terms of such covenants, otherwise he will not be bound to complete ; see Form No. 41, Part I, *supra*, and the notes thereto. It should be stated that the purchaser has inspected a copy of the lease and shall be deemed to have notice of its contents. Contents of lease or underlease.

A legal mortgagee, including a chargee by way of legal mortgage, will sell and convey the fee simple or the head term affected by the mortgage, any mortgage term will be merged in the fee simple or head term : L. P. Act, 1925, ss. 88 and 89. Only where a mortgage by sub-demise does not include the whole property comprised in the head term and the rent has not been apportioned will the mortgagee be unable to do more than convey the mortgage term. Sales by mortgagees.

(*c*) Under these words the purchaser is not fixed with notice of the terms of the tenancy as between himself and his vendor : *Caballero* v. *Henty* (1874), L. R. 9 Ch. 447 ; 43 L. J. Ch. 635 ; Dart, 7th ed., 884, 885 ; and see *Clements* v. *Conroy* (1911), 2 Ir. R. 500. There must be an express condition.

(*d*) For forms of parcels see the forms preceding "Conveyances on Sales," *inf.*

described in the —— Schedule hereto, and are delineated on the plan hereto annexed, and thereon coloured ——.(*e*)

Time for completion. Possession.

2. THE Purchaser [*where there is a deposit*] having this day paid to the Vendor (*f*) the sum of £——, as a deposit and in part payment of his purchase-money,(*g*) shall pay [the balance of] his purchase-money on the —— day of —— next, at the office of Messrs. ——, No. —— Street, in ——, the solicitors of the Vendor, at which time and place the purchase shall be completed, and the Purchaser paying [the balance of] his purchase-money shall as from that day be let into possession or into receipt of rents and profits, and shall pay all outgoings, and up to that day all rents, rates, taxes, and other outgoings shall (if necessary) be apportioned (and so that all rates shall be

Variation where several leases are sold.

(*e*) Where several leases or underleases are sold together, instead of the first paragraph, say:—

The Vendor shall sell and the Purchaser shall purchase at the price of £—— ALL THOSE pieces of land with the messuages erected thereon or on parts thereof shortly described in the third column of the Schedule hereto, free from incumbrances, for the residue of the respective terms mentioned in the fourth column of the same Schedule granted by the several leases [underleases] the dates whereof are mentioned in the first column of the same Schedule, at the several rents mentioned in the fifth column of the same Schedule, subject to the lessee's [underlessee's] covenants, and the conditions contained in the said leases [underleases] and subject also to the tenancies affecting the premises.

Variation where the title is registered.

Add at the end of the parcels:—

All of which premises are registered with a —— title under the Land Registration Act, 1925, under the heading District ——, Title No. ——.

In this case care should be taken that the sale plan corresponds with the registration plan, though in some cases enlargements may be necessary.

Deposit on sale by tenant for life.

(*f*) There is frequently no deposit upon a sale by private contract. If there is a deposit and the vendor is tenant for life, the following will be substituted for the words in the text:—

having this day paid the sum of £—— as a deposit and in part payment of his purchase-money to the Vendor's solicitors as agents for the Settled Land Act trustees.

The deposit should not be paid to stakeholders if the vendor is in a fiduciary position.

(*g*) If timber, fixtures, &c., are also to be paid for, see General Conditions of 1925, clause 3; also the Forms under the heading "As to the Auction, &c.," Pt. I, s. I, *supra*.

apportioned according to the period for which they are intended to provide and not as running from the dates when the same are made or allowed (*h*)), and the balance shall be paid by, or allowed to, the Purchaser on completion, and if from any cause whatever, other than wilful default on the part of the Vendor, the completion of the purchase is delayed beyond the last-mentioned day, [the balance of] the purchase-money shall bear interest at the rate of £5 (*i*) per cent. per annum from that day to the day of actual payment thereof.

Interest in case of delay.

3. THE Purchaser shall within —— days after delivery of his abstract [*or where the title is registered and no abstract or copy is to be furnished*, after receipt of the Vendor's authority to inspect the register] send to the solicitors of the Vendor a statement in writing of all the objections and requisitions (if any) to or on the title or evidence of title, or the abstract or this Agreement, and subject thereto the title shall be deemed accepted, and all objections and requisitions not included in any statement sent within the time aforesaid shall be deemed waived, and an abstract, though in fact imperfect, shall be deemed perfect,

Time for delivery of requisitions.

(*h*) See *Cheney* v. *Tallowin* [1904], 2 K. B. 763 ; 73 L. J. K. B. 943.

(*i*) The delay in completion may arise from the state of the title or the slowness of the vendor's solicitor in replying to the requisitions, or from many causes over which the purchaser can exercise no control ; thus he may find himself in the position of having to pay interest while his money is lying idle. Under these circumstances a purchaser is sometimes advised to insist on a proviso being added to the following effect : " Provided, that if the delay in completion shall arise from the state of the title, or from any other cause not being the Purchaser's fault, the Purchaser shall be at liberty to place [the balance of] his purchase-money on a deposit account at the —— Bank, in his own name and at his own risk, and give notice thereof to the Vendor, and thereupon the Vendor shall be entitled to receive from the Purchaser such interest only as shall be actually produced by such deposit."

Interest.

Power for purchaser to deposit or invest his purchase-money.

If nothing was said about interest, the purchaser's obligation in this respect was formerly left to depend on the rule of equity, viz. : That from the day fixed for completion the purchaser is entitled to receive the rents, and must pay interest at £4 per cent. on his purchase-money ; but unless the delay is his own fault, he may relieve himself of the liability to interest by giving the vendor notice that his money is lying idle : *Bennett* v. *Stone* [1903], 1 Ch. at p. 524 ; 72 L. J. Ch. 240 ; and see *Re Bayley-Worthington and Cohen* [1909], 1 Ch. 648 ; 78 L. J. Ch. 351. But see now the Statutory Conditions, which apply to contracts by correspondence unless a contrary intention is expressed. Compare General Conditions of 1925, clauses 4 and 5, as to deposit, completion, possession and apportionment, and clause 7, as to interest.

Where there is no condition as to interest.

Contracts by correspondence

except for the purpose of any further objections or requisitions which could not be taken or made on the information therein contained, and an answer to any objection or requisition shall be replied to in writing within ten days after the delivery thereof, and if not so replied to shall be considered satisfactory, and time shall be deemed in all respects as of the essence of this clause.

and replies to answers.

Power to rescind.

If the Purchaser shall take any objection or make any requisition which the Vendor is unable or, on the ground of expense, unwilling to remove or comply with, or if any question shall arise as to the conveyance, and the Purchaser shall not withdraw such objection or requisition or waive the question within ten days after being required so to do, the Vendor may by notice in writing delivered to the Purchaser or his solicitor, and notwithstanding any intermediate negotiation or litigation, rescind this Agreement [*where there is a deposit*, and shall within one week after such notice repay to the Purchaser his deposit money], and the Purchaser shall return forthwith all abstracts and papers in his possession belonging to the Vendor, and shall not make any claim on the Vendor for costs or otherwise.(*j*)

Commencement of title.

4. THE abstract of title shall commence with a Deed dated the —— day of ——, being [a conveyance on sale, *or* a mortgage, *or* a marriage settlement, voluntary settlement, &c.].(*k*)(*x*)

Particular points arising on the abstract.

5. *Insert here any conditions required for precluding a Purchaser from objecting to the title as shown by the Abstract. See General Conditions of* 1925, *clauses* 12-17 ; *also Forms under Sec. III, "Matters arising on the Abstract,"* Pt. I, *supra.*

Identity, &c.

6. *Here will follow, if required, conditions relating to identity, land tax, tithe rentcharge, apportionments, restrictive covenants already affecting the land, &c. ; see General Conditions of* 1925, *clauses* 18-23 ; *also Forms under Sec. IV, "As to Identity and other matters arising on the Particulars,"* Pt. I, *supra.*(*x*)

Preparation of conveyance.

7. THE conveyance (*l*) to the Purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be

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(*j*) Compare General Conditions of 1925, clauses 9-11, as to requisitions and rescission.

(*k*) See the General Conditions of 1925, clauses 12-15, as to commencements of title ; also the Forms under Sec. II, Pt. I, *supra*, "As to the Commencement of Title and Contents of the Abstract," where the necessary provisions for cases of copyholds and leaseholds and particular classes of property will be found. Where valuable leasehold property is sold a purchaser usually makes some inquiries as to the lessor's title before the contract is signed.

(*x*) As to registered land, see generally the Forms in Sec. IX, Pt. I.

(*l*) Compare General Conditions of 1925, clause 24, which can be properly incorporated in place of the clauses in the text.

delivered at the office of the solicitors of the Vendor at least —— days before the day fixed for completion for execution by the Vendor and other necessary parties (if any), and the draft of such conveyance for perusal and approval on behalf of the Vendor and other necessary parties (if any) shall be left at the said office at least seven days before delivery of the engrossment [and time shall be of the essence of this clause]. Delivery of draft.

8. *See General Conditions of* 1925, *clause* 25 (*settled land*), *clause* 26 (*covenants for title*), *clause* 27 (*property subject to rents*), *clause* 28 (*incumbrances*), *clause* 29 (*sales by mortgagees*), *clause* 30 (*reservations*), *clause* 31 (*sales subject to covenants*), *clause* 32 (*the imposition of restrictive covenants*), *clause* 33 (*duplicates*) ; *also Forms under Sec. V*, "*As to the Conveyance and its Contents*," Pt. I, *supra.*(*x*) Matters affecting the conveyance.

9. *Insert conditions, if required, as to the retention of documents, their production, &c. See General Conditions of* 1925, *clause* 34 ; *also Forms under Sec. VI*, "*As to Documents*," Pt. I, *supra.*(*m*)(*x*) Documents.

10. *Add conditions as to compensation or no compensation for errors in description, &c., and as to fire insurance, if required ; see General Conditions of* 1925, *clause* 23 (*fire insurance*), *clause* 35 (*compensation for errors*) ; *also Forms under Sec. VII*, "*As to Compensation and Miscellaneous Matters*," Pt. I, *supra.* Compensation, &c.

11. Clause 36 (power to re-sell on default) of the General Conditions of 1925, shall apply to this agreement.(*n*) Power to re-sell after notice.

AS WITNESS, &c.

THE SCHEDULE.(*o*)

(*m*) The cost of production of documents in the custody of mortgagees is now thrown on the vendor (reversing *Re Willett and Argenti* (1889), W. N. 66 ; 60 L. T. 735) : L. P. Act, 1925, s. 45 (4). Documents in custody of mortgagees.

(*x*) As to registered land, see generally the Forms in Sec. IX, Pt. I.

(*n*) As to this power to re-sell, *cf.* 43 Sol. J. 601 to 602 ; a purchaser is not justified in objecting to the power conferred by this clause, which is designed to secure justice between both parties. Throughout this Precedent the provisions of the General Conditions of 1925 should, when applicable, be incorporated by reference. Power to re-sell where sale by private treaty.

(*o*) In the case of a sale of several leases the schedule may be as follows :— Schedule of several leases.

THE SCHEDULE.

Date of Lease.	Parties to Lease.	Short Description of Property demised.	Term.	Yearly Rent.
1. 19—	A. B. of the one part and C. D. of the other part.	A piece of land at —— with a messuage known as —— erected thereon.	99 years from—— 19—	£3 5 0
2. 19—	&c.	&c.	&c.	&c.

No. II.

AGREEMENT *for* SALE *by* TENANT *for* LIFE, *with* FORM *of* NOTICE *to S. L. Act* TRUSTEES.(*a*) (*Equitable Interest in Legal Estate.*)

This Precedent will follow the Precedent No. 1 *; the tenant for life being described as "the Vendor" in the Memorandum at the end of the General Conditions of* 1925 *; the deposit (if any) must be paid to the Settled Land Act trustees or to the solicitors "as the agents of the Settled Land Act trustees." If the Vendor is an absolute owner subject to equitable interests and on this account is selling under the S. L. Act,* 1925, *it must be so stated, as in this case he will give the covenants implied by conveying as beneficial owner.*

Where the notice under S. L. Act, 1925, *s.* 101,(*b*) *has not expired or has not been waived, add to the special conditions*—This Agree-

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Schedule of underlease.

The following is a form of description in a schedule of property held by underlease :—

The Messuage known as No. —, —— Street, in the Parish of ——, with the stables and yard thereto belonging now in the occupation of ——, which premises were, by an Underlease, dated the —— day of ——, and made, &c., demised to —— (*original sub-lessee*), for the term of ninety-nine years (except the last ten days thereof), from the —— day of ——, at the yearly rent of £——, and subject to the covenants and conditions contained in the said Underlease, and on the underlessee's part to be observed and performed.

(*a*) This prec. will apply to registered land, but in that case the restriction on the register must be studied and provision made for complying with it before entering into the contract. See also Section IX, *supra*.

Notice of intention to sell by tenant for life.

(*b*) The following is the usual form of notice to sell, &c., by a tenant for life :—

Form of notice.

To ——, of ——, and ——, of ——, Trustees for the purposes of the Settled Land Act, 1925, of the Settlement dated, &c. [*or* the Will of ——, deceased, dated, &c.] [*or where there is a compound settlement, say*] the Settlement effected by a Trust Deed dated, &c. [the Will of ——, deceased, dated, &c.], and, a Vesting Instrument dated, &c.

I [We] hereby, pursuant to section one hundred and one of the Settled Land Act, 1925, give you notice of my [our] intention to sell [exchange, extinguish manorial incidents, grant options

ment shall not be binding on the Vendor if proceedings are taken to prevent the sale before the —— day of ——.

Where the property sold includes a principal mansion house,(c) *pleasure grounds, park or lands usually occupied therewith, and where the settlement came into operation before* 1926, *the consent of the trustees of the settlement cannot be obtained, or where the settlement comes into operation after* 1925, *and expressly provides that the consent of the trustees or an order of the court shall be requisite, and the consent of the trustees cannot be obtained, add to the Special Conditions*—The Vendor will forthwith apply for and endeavour to obtain an Order of the Chancery Division sanctioning this Agreement, and in case such Order shall not be obtained before the —— day of —— next, this Agreement shall become void [*where there is a deposit*, and the Vendor shall within one week after such date repay to the Purchaser his deposit money], and the Purchaser shall thereupon return forthwith all abstracts

Application to court to authorise sale of mansion house, &c.

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over, or lease, *as the case may be*] under the powers of the Settled Land Act, 1925, the settled land or part or parts thereof whenever it becomes necessary or expedient.

Dated this —— day of ——.

Notice required.

There must, under s. 101, at the date of notice given, be not less than two trustees, unless the trustee is a trust corporation and notice must be sent in a registered letter to each of the trustees, and also to their solicitor (if any is known to the tenant for life), not less than one month before completion unless all the trustees have in writing waived notice, or accepted shorter notice; but notice is unnecessary in the case of certain leases not exceeding twenty-one years (S. L. Act, 1925, s, 42 (5)); and a person dealing in good faith with the tenant for life need not inquire as to the giving of any such notice: S. L. Act, 1925, s. 101 (5). It is sufficient if the notice expires or is waived before the date of completion: *D. of Marlborough* v. *Sartoris* (1886), 32 Ch. D. 616; 56 L. J. Ch. 70; *Hatten* v. *Russell* (1888), 38 Ch. D. 334; 57 L. J. Ch. 425; but there is a possibility of proceedings being taken to stop the sale.

Notice of general intention.

Notice of a general intention is sufficient in the case of a sale, exchange, or lease: S. L. Act, 1925, s. 101 (2). It is conceived that the grant of an option (*ib.*, s. 51) to purchase or to take a lease is on the same footing as a sale or lease. The execution of a compensation agreement, to extinguish manorial incidents forming part of the settled land, is a sale. See *Re Ray's S. E.* (1884), 25 Ch. D. 464; 53 L. J. Ch. 205, as to a mortgage or charge.

Principal mansion and park.

(*c*) If the property sold includes a principal mansion house, pleasure grounds, park, or lands usually occupied therewith (as to which see S. L. Act, 1925, s. 65), either the consent of the trustees of the settlement or an order of the court must be obtained in the cases referred to in the text: *ib.* The consent need not be in writing: *Gilbey* v. *Rush* [1906], 1 Ch. 11; 75 L. J. Ch. 32. For definitions of "principal mansion house," in s. 65 (2), see *Re Wythes' S. E.* [1908], 1 Ch. 593; 77 L. J. Ch. 319; and of "park," see *Pease* v. *Courtney* [1904], 2 Ch. 503; 73 L. J. Ch. 760.

and papers in his possession belonging to the Vendor, and shall not make any claim on the Vendor for costs or otherwise.

Note.—The property will be described in the particulars prefixed to the Special Conditions.

No. III.

AGREEMENT *by* TENANT *for* LIFE *for* SALE *of* HEIRLOOMS,(*a*) *subject to the leave of the* COURT.

AN AGREEMENT made this —— day of —— BETWEEN A. B., of, &c. (*tenant for life*, hereinafter called the Vendor) of the one part, and C. D., of, &c. (hereinafter called the Purcha er), of the other part:

WHEREAS—

Recital of Will.

(1) Under the Will dated the —— day of ——, and proved on the —— day of ——, of P.M., deceased, who died on the —— day of ——, the Vendor is now tenant for life in possession of certain settled land in the County of W. and of certain chattels or heirlooms, including the chattels mentioned in the Schedule hereto now in the mansion house of L. in the said County, which were bequeathed to the Trustees of the said Will Upon trust to devolve as heirlooms along with the said settled land [until a tenant in tail by purchase should attain the age of twenty-one years]:

(2) As appears from a Vesting Deed dated —— H. M., of, &c., and P.K., of, &c., are the present Trustees of the said Will for the purposes of the Settled Land Act, 1925 (*b*).

Heirlooms.

(*a*) See S. L. Act, 1925, s. 67. A sale of heirlooms cannot be made by a tenant for life without an order of the court: *ib.*, sub-s. 3; nor will the court ratify a sale made without an order (*Re Ames* [1893], 2 Ch. 47 ; 62 L. J. Ch. 685); but may direct the trustees to take no steps for their recovery: *S. C.*; see also *Re Smith's S. E.*, 15th December, 1888, S. 2564. The order will not be made simply for purposes of convenience: *D'Eyncourt* v. *Gregory* (1876), 3 Ch. D. 635; 45 L. J. Ch. 741. As to when a sale will be sanctioned, see *Re Hope* [1899], 2 Ch. 679; 68 L. J. Ch. 625; and *cf. Re Sebright* [1912], 56 Sol. J. 240. This agreement, being for the sale of "goods, wares, or merchandise," is exempt from stamp duty: Stamp Act, 1891, s. 59 (1); Highmore, 4th ed., 178.

Mode of settling heirlooms, and power to dispose by Will.

Heirlooms can, after 1925, be entailed in the same way as freehold land; if this is done they will not vest absolutely in the first tenant in tail by purchase; until he actually disentails, they will devolve with the land: L. P. Act, 1925, s. 130. If chattels are entailed, without reference to settled land, they can be sold by the trustees with the consent of the usufructuary of full age; *ib.*, sub-s. 5. A tenant in tail in possession can dispose of entailed interests in any property by Will as if he had barred the entail (*ib.*, s. 176); but this section does not extend to a tenant in tail who by statute cannot bar the entail, nor to a tenant in tail after possibility of issue extinct: *ib.*, sub-s. 2.

Power of sale, effect of.

(*b*) Trustees with power to sell the land are sufficient (S. L. Act, 1925, s. 30 (1) (i); *Constable* v. *C.* (1886), 32 Ch. D. 233; 55 L. J. Ch. 491); but not

NOW IT IS HEREBY AGREED as follows:—

1. THE Vendor shall sell and the Purchaser shall purchase, at the price of £——, the chattels mentioned in the Schedule hereto. Agreement for sale.

2. (1) Within fourteen days after notice in writing has been given to the Purchaser or left for him at his address above stated that an Order of the Court has been made sanctioning the sale hereby agreed on he shall pay the said sum of £—— (*c*) into the bank of Messrs. —— to the credit of the said H. M. and P. K., or other the person or persons (if any) (*d*) entitled to receive the same under such Order, and a receipt for the same signed by the said H. M. and P. K., or other person or perons aforesaid, shall be delivered to the Purchaser by the bankers. Payment of purchase-money,

(2) Upon production at the mansion house of L., aforesaid, of such receipt, after not less than seven days' previous notice in writing given to the Vendor of the day when it will be produced, the said chattels shall be delivered to the Purchaser or to any person authorised by him in writing to receive the same, and shall be removed from the mansion house at his own risk and cost. and delivery of heirlooms.

(3) The risk of loss of or damage to the said chattels by fire or burglary shall be borne by the Purchaser as from the date hereof Loss by fire, &c.

3. IF the Purchaser shall not pay the said purchase-money on the day and in manner hereinbefore provided, the same shall bear interest at the rate of £5 per cent. per annum from that day to the day when the same and any interest due thereon shall Interest on purchase-money.

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if the power is for limited and not general purposes: *Re Coull's S. E.* [1905], 1 Ch. 712; 74 L. J. Ch. 378. But save for the purpose of constituting S. L. Act trustees, an express power to sell settled land is useless; it can only be exercised by the tenant for life: S. L. Act, 1925, s. 108 (2). A vesting deed is only required by s. 13 in the case of land.

(*c*) The purchase-money is "capital money" (S. L. Act, 1925, s. 67 (2)), and formerly was personal estate until invested in land: *D. of Marlborough* (1886), 32 Ch. D. 1; 55 L. J. Ch. 339. But if, after 1925, the heirlooms are entailed, it is immaterial whether or not the purchase-money is deemed real or personal estate. The court may direct the proceeds to be applied in the repair of heirlooms subject to the same settlement: *Re Waldegrave* [1899], 81 L. T. 632; [1899], W. N. 240. Proceeds of sale of heirlooms.

(*d*) Where the land and heirlooms are settled by separate instruments, but the trustees of the heirlooms are declared by reference to the land, the trustees of the settlement of the land would appear (see Wolst., 11th ed.) to be the proper persons to receive the money; but see *Re Lord Stafford's Settlement and Will* [1904], 2 Ch. 72; 73 L. J. Ch. 560. It would be otherwise if the sale were made by the trustees of the heirlooms under L. P. Act, 1925, s. 130 (5). Heirlooms and land settled by separate instruments.

be paid into the bank and to the credit aforesaid, and the Purchaser shall not be entitled to delivery of the receipt aforesaid until such interest is paid.

As to the title to be shown.

4. THE Purchaser or his solicitor shall be entitled to inspect at the office of Messrs. ——, No. —— Street in ——, a copy of the testator's Will and the inventory of heirlooms held on the trusts thereof (which inventory includes the said chattels) and the Deed [*or* an office copy of the Order] under which the said H. M. and P. K. are the present Trustees of the said Will, but shall not be entitled to any abstract or copy of such Will, inventory or deed [*or* Order] and shall not require any other evidence of the title of the Vendor as tenant for life of the said heirlooms, or that the said H. M. and P. K. are the present Trustees of the said Will for the purposes of the said Act.

As to obtaining order of court.

5. THE Vendor shall forthwith give such notices (if any) as are necessary in order to enable the sale hereby agreed on to be made and shall also apply for and endeavour to obtain an Order of the Chancery Division sanctioning such sale and this Agreement.

6. IF an Order sanctioning such sale and this Agreement shall not be obtained before the —— day of ——, this Agreement shall become void.

AS WITNESS, &c.

THE SCHEDULE.

[*To contain a description of the heirlooms to be sold.*]

No. IV.

AGREEMENT *for payment of* PURCHASE-MONEY *by* INSTALMENTS.(*a*) (*Equitable Interest.*)

Parties.

AN AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

WHEREAS—

Agreement for sale.

(1) The Vendor has agreed to sell and the Purchaser has agreed to purchase at the price of £——, the property at —— (hereinafter called the property) described [as Lot ——] in the sale plan and printed particulars and conditions of the sale by auction by Messrs. ——, at ——, on the —— day of —— last, of the —— estate of the Vendor, subject to the said

(*a*) *Cf.* Forms Nos. 107-8, Pt. I, Sec. V, *supra*.

particulars and conditions of sale [which include certain restrictions, stipulations, and conditions as to building on, and user of, the property, and other matters]:

Payment of deposit.

(2) The Purchaser has paid to the Vendor the sum of £—— as a deposit in part payment of the purchase-money, and has accepted the Vendor's title to the property as at the date of this Agreement.

Balance to be payable by instalments.

(3) The Purchaser has requested the Vendor to accept payment of the balance of the said purchase-money, together with interest thereon, in manner and upon the terms hereinafter appearing:

NOW IT IS HEREBY AGREED as follows:—

Payment of balance by instalments.

1. THE Purchaser shall pay to the Vendor the sum of £——, being the balance of the said purchase-money, by —— equal [half] yearly instalments of £—— each, to be paid on the —— day of —— [and the —— day of ——] in every year, the first instalment to be paid on the —— day of —— next.

Interest on instalments.

2. ON each [half] yearly day the Purchaser shall, in addition to the instalment payable on that day, pay to the Vendor interest on the balance of the purchase-money remaining due up to that day, at the rate of £— per cent. per annum, computed from the —— day of —— (being the day fixed for completion of the purchase by the aforesaid conditions of sale) or the next preceding [half] yearly day, as the case may be.

Power to pay off whole of balance.

3. THE Purchaser may (subject to the provisions applicable in case of default hereinafter contained), at any time on giving seven days' previous notice in writing to the solicitors of the Vendor, pay off the entire balance of the purchase-money for the time being remaining due, together with all interest thereon to the date of payment.

Purchaser to pay additional costs in respect of variations in title, &c.

4. ALL additional costs and expenses, whether in respect of evidence of title or conveyance, necessitated by any devolution of title, whether of the Vendor or Purchaser, subsequent to the date of this Agreement, shall be borne and paid by the Purchaser.

Conveyance to Purchaser.

5. (1) So soon as the balance of the purchase-money and all interest thereon and all such additional costs and expenses as aforesaid shall have been paid by the Purchaser, the Vendor shall execute a conveyance to the Purchaser in the form of the conveyance contained in the Schedule hereto, with such modifications only as any variations in the state of the title may require.

(2) The conveyance to the Purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be delivered at the office of the solicitors of the Vendor at least —— days before the day of actual completion for execution by the Vendor and other necessary parties (if any) and the draft of such conveyance for perusal and approval on behalf of the Vendor and other necessary parties (if any) shall be left at the said office at least seven days before delivery of the engrossment.

Documents.

6. *Insert and adapt Form No.* 142 *as to documents*, p. 312.

Purchaser not to deal with property or the contract without consent.

7. NEITHER the Purchaser, nor the persons deriving title under him, shall before conveyance let, sell, or otherwise part with the possession of the property, or any part thereof, or assign his or their interest under the contract for sale and this agreement, without the previous consent in writing of the Vendor, or the persons deriving title under him [and until conveyance the Purchaser and the persons deriving title under him shall fully perform and observe all the restrictions, stipulations, and conditions contained or referred to in the aforesaid printed particulars and conditions of sale, in the same manner in all respects as if the said sale had been fully completed in accordance with the said conditions of sale as on the date thereby fixed for completion].

Provision if Purchaser makes default.

8. IF the Purchaser shall make default in payment of any instalment or interest or costs or expenses payable under this agreement for a period of fourteen days after the date hereinbefore fixed for payment of the same, or after demand, as the case may be, or shall otherwise neglect or fail to comply with any of the provisions herein contained, he shall be deemed to have neglected or failed to comply with the aforesaid conditions of sale within the meaning of the power to resell therein contained, and all interest actually paid under this agreement and any money expended by the Purchaser in improving the premises shall (in addition to the deposit) be forfeited to the Vendor, and any instalments of purchase-money actually paid under this agreement may be retained by the Vendor, without liability to pay interest, in or towards satisfaction of the amount payable by the Purchaser to the Vendor as liquidated damages, or in respect of expenses in accordance with the said conditions of sale:

Provided that the balance (if any) of the amount of such further instalments beyond the amount so payable by the

Purchaser shall be repaid to him within one month from the date when the balance is ascertained.(*c*)

AS WITNESS, &c.

THE SCHEDULE.

THE FORM OF CONVEYANCE ABOVE REFERRED TO.

[*Here set out the agreed Form.*]

No. V.

AGREEMENT *for* SALE *where* PART *of the* PURCHASE-MONEY *is to* REMAIN *on* MORTGAGE *of the* PROPERTY *for* A CERTAIN PERIOD. VARIATIONS *where the* MORTGAGE *is to* PROVIDE *for repayment by* INSTALMENTS(*a*). (*Equitable Interest in Legal Estate.*)

AN AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part WHEREBY IT IS AGREED as follows :— Parties.

1. THE Vendor shall sell, and the Purchaser shall purchase, ALL THOSE, &c.,(*b*) and the fee simple thereof in possession, at the price of £——, but no deposit shall be payable. Agreement to sell and purchase.

2. (1) The purchase shall be completed on the —— day of —— next, and from that day the Purchaser shall be entitled to the rents and profits of the property, all outgoings up to that day being discharged by the Vendor. Time for completion of purchase.

(2) If from any cause whatever the purchase shall not be completed on the said —— day of ——, the Purchaser shall pay to the Vendor interest on the said purchase-money from the said —— day of —— until the completion of the purchase at the rate of £5 per cent. per annum.

3. SAVE as herein expressly provided, the provisions of the General Conditions of 1925 shall apply to this agreement.

4. THE abstract of title shall commence ——

(*c*) Forfeiture of past instalments is a penalty against which relief will be granted: *Kilmer* v. *B. C. &c. Ltd.* [1913], A. C. 319; 82 L. J. P. C. 77; *Steedman* v. *Drinkle* [1916], 1 A. C. 275; 85 L. J. P. C. 79.

Where completion is delayed a land charge should be registered to protect the contract for sale.

(*a*) *Cf.* Forms Nos. 106 and 108, Pt. I, Sec. V, *supra*.

(*b*) For forms of parcels, see Forms preceding "Conveyances on Sales," Pt. I, Sec. II, p. 471 *et seq.*

Part of purchase-money to remain on mortgage for time certain.

5. (1) Upon the completion of the purchase, the Purchaser shall pay to the Vendor the sum of £—— (part of the said purchase-money), and the sum of £—— (the balance thereof) shall remain on mortgage of the property, with interest at the rate of £5 per cent. per annum, payable half-yearly.

(2) By the mortgage deed the balance of the purchase-money shall be made payable on the —— day of —— next,(*c*) but subject to a provision precluding the Vendor from calling in the same during a term of —— years, from the —— day of —— next, if interest shall be regularly paid in the meantime within thirty days after the respective half-yearly days for payment thereof, and if the Purchaser shall duly observe the covenants (other than the covenants for payment of principal and interest) to be contained in the mortgage deed; and also a provision precluding the Purchaser from compelling the Vendor to receive the principal money before the expiration of the said term.

Mortgage to be executed immediately after completion.

6. (1) The said mortgage shall be prepared by the Vendor at the expense of the Purchaser, and shall be executed by the

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(*c*) If the principal money is to be payable by instalments, omit the rest of clause 5, and substitute as follows:—

Variation where balance of purchase-money to be paid by instalments.

(3) The mortgage shall contain a provision that the balance of the money may be paid by equal half-yearly instalments of £—— each, the first instalment to be paid on the —— day of —— next, and every subsequent instalment on the —— day of —— and the —— day of —— in every year, or within thirty days thereafter, until the whole of the said balance is fully paid.

(4) If with every instalment interest at the rate of £— per cent. per annum is paid on the principal money remaining due, then and in such case the payment of the principal money shall not be required otherwise than by such instalments as aforesaid.

(5) By the mortgage deed it shall be also provided—

(*a*) that the Purchaser may pay off the whole of the principal money and interest remaining due on any of the aforesaid half-yearly days on giving to the Vendor at least six months' notice of his intention so to do;

(*b*) that upon any sale purporting to be made under the statutory power of sale a Purchaser shall not be bound or concerned to see or inquire whether default has been made in payment of the principal money or any instalment thereof, or any interest thereon, or be affected by notice that no such default has been made.

Purchaser immediately after the execution by the Vendor of the conveyance of the property to the Purchaser.

(2) All the documents of title which but for such mortgage the Purchaser would be entitled to have delivered to him upon the completion of the purchase shall be retained by the Vendor as mortgagee, and the transaction shall be treated in all respects as if the Purchaser had duly paid the whole of the purchase-money to the Vendor upon the completion of the purchase, and the Vendor had immediately thereupon repaid the sum of £—— to the Purchaser, by way of loan upon such security as aforesaid.

(3) The mortgage shall either be in the form of a charge by way of legal mortgage or a mortgage by demise for a long term without impeachment of waste as the Vendor may think fit.(*d*)

AS WITNESS, &c.

No. VI.

AGREEMENT *for* SALE *to a* WORKING MAN *of a* COTTAGE *in a* TOWN, *the* PURCHASE-MONEY *to be paid by* INSTALMENTS *spread over* THIRTY *years.* SPECIAL PROVISIONS *including a* POWER *for the* VENDOR *to* RE-PURCHASE *in certain Events.* (*Equitable Interest in Legal Estate.*)

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part. Parties.

WHEREBY IT IS AGREED as follows :—

1. SUBJECT to the conditions herein contained, the Vendor shall sell, and the Purchaser shall purchase, ALL THAT cottage and property known as No. —, —— Street, in the parish of A——, in the county of N——, now in the possession of the Purchaser, and delineated on the plan hereto and thereon edged ——, and the fee simple thereof, at the price of £360, to be paid by 120 equal quarterly instalments of £3 each on the —— day of ——, the —— day of ——, the —— Agreement to sell. Purchase-money to be paid by instalments.

(*d*) If the land is in a compulsory area or is already registered under the L. R. Act, 1925, then provision must be made for a registered charge to be given in place of a mortgage, and for the purchaser to be registered as proprietor of the land. When he applies for registration he can execute a charge, as if he were registered, and apply for registration thereof at the same time. Variation for registered land.

day of ——, and the —— day of —— in every year, the first payment to be made on the —— day of —— next, and the last payment on the —— day of ——, 19—.

Purchaser may pay instalments in advance at discount price.

2. On the —— day of —— in any year, after paying the quarterly instalment due on that day, the Purchaser may at his option pay to the Vendor the discount price mentioned in the Schedule hereto according to the total amount of the sums already paid, whether by instalments or otherwise, and such discount price shall be accepted by the Vendor in full satisfaction of the balance of purchase-money then remaining unpaid.

Power to Vendor to resume possession in case of Purchaser's default.

3. In case any instalment is not paid on the day on which the same shall become payable, the same shall carry interest at the rate of £6 per cent. per annum from that date until payment, and if any instalment shall remain unpaid either in whole or in part for one year after the same shall become payable, the Vendor may, by notice in writing delivered or sent by post to the Purchaser, determine the contract for purchase, and resume possession of the property agreed to be sold, and the Purchaser shall not be entitled to the repayment of any part of the instalments previously paid by him.

Vendor to have right of pre-emption.

4. If the Purchaser shall desire to realise the property before all the instalments have been paid, he shall give to the Vendor, if living, the right of pre-emption thereof at a price not exceeding nineteen-twentieths of the sum for the time being representing the Purchaser's vested interest mentioned in the Schedule hereto, according to the total amount of the sums already paid, whether by instalments or otherwise.

If not exercised, Purchaser may sell to a working man.

5. If the Vendor shall elect not to purchase, or shall not, within fourteen days after the service of the offer on him accept in writing the same, the Purchaser may sell his interest to any other person, being a working man (but to no other person), who will undertake to succeed him in the occupation of the property subject to the terms of this Agreement, and by supplemental Memorandum agree with the Vendor to be bound thereby.

Repair.

6. The Purchaser shall at all times keep the property, including all fixtures, in good and substantial repair.

Restrictions as to user.

7. The Purchaser shall not carry on any trade or business upon the property or any part thereof, but shall use the cottage and buildings erected thereon as a private dwelling-house only, and shall not permit the said cottage and buildings to be inhabited by more than one family or by any person other than a working man and his family, and will not use or occupy the same or any

part thereof, nor permit the same or any part thereof to be used or occupied, so as in the opinion of the Vendor to damage or injuriously affect the adjoining property or create a nuisance.

Vendor's title.

8. THE Vendor's title shall not be called for or investigated, or on any ground objected to, but it shall be assumed (as the fact is) that he is owner in fee simple of the property free from incumbrances: Provided that the Purchaser shall be furnished at his own cost, if he so requires, with a statutory declaration setting out shortly the effect of the documents of title under which the Vendor derives title, and from which it will appear that the Vendor or the person deriving title under him are, at the time of conveyance, entitled to or have power to convey the legal estate in the property.

Exception of minerals.

9. ALL mines, minerals, and mineral substances shall be excepted out of the conveyance, and the right, whether the surface or any adjoining hereditaments be let down or not, to work and get the same by underground workings only, and to carry them away when gotten, shall be reserved to the Vendor, he making reasonable compensation for all damage caused by the workings to the surface and any buildings for the time being thereon.

No conveyance until all instalments paid.

10. (1) The Purchaser shall not be entitled to a conveyance until the whole of the purchase-money has been paid.

(2) Until conveyance the Purchaser shall not let or part with the possession of the said cottage and buildings except as provided by clauses 4 and 5 hereof.

Form of conveyance.

11. (1) The conveyance to the Purchaser shall be executed in duplicate at the expense, as regards the duplicate, of the Vendor.

(2) The Purchaser shall be entitled to have a conveyance in the form which has been produced to him prepared, executed, and delivered to him free of cost, except stamp duty (*b*) and a fee of £1 11*s.* 6*d.*

(3) Provided that if, by reason of the death of the Vendor or on account of any dealings effected before the time of completion, the state of the title has altered, the consequential alterations shall be made in the form of the conveyance.

(*b*) As the purchase-money is under £500 the conveyance should contain a declaration to the effect that it does not form part of another transaction, so as to avoid the additional stamp duties imposed by the Fin. (1909-10) Act, 1910, s. 73; Highmore, 4th ed., 153, 154.

When the conveyance is executed the vendor must register a land charge to protect the restrictive covenants.

Bonus to Vendor on sale by Purchaser.

12. If a sale is effected under clause 5 hereof the Purchaser shall pay to the Vendor £5 per cent. on the purchase-money paid by the person so purchasing from the Purchaser.

Definition of "working man."

13. The expression "working man" used herein means and includes mechanics, artizans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own families, and persons other than domestic servants whose income does not exceed an average of £3 a week, and the families of any such persons who may be residing with them.

14. In case of doubt whether any person is a working man within the meaning of these presents, the decision of the Vendor shall be final and conclusive.

Vendor to be at liberty to repurchase in certain events.

15. (1) If the Purchaser shall fail to comply with clauses 6, 7, or 11 hereof, the Vendor may pay to the Purchaser the sum for the time being representing the Purchaser's vested interest mentioned in the Schedule hereto according to the amount of the sums already paid, whether by instalments or otherwise, less such a sum as shall in the opinion of the Vendor's surveyor be requisite to make good all defects and want of repair in and about the said cottage and buildings, and thereupon the contract for purchase shall determine, and the Purchaser shall on demand give up possession of the said cottage and buildings to the Vendor.

(2) The option given to the Vendor by this clause shall not prejudice any right of action or other remedy of the Vendor in respect of any breach by the Purchaser of any provision of this Agreement.

Definitions.

16. The expressions "the Vendor" and "the Purchaser" include the persons respectively deriving title under them where the context so admits.(*c*)

As witness, &c.

Estate contract.

(*c*) This agreement, as completion is postponed, should be registered as a land charge under L. C. Act, 1925, or, if the title is registered, notice of it should be entered on the register under L. R. Act, 1925, s. 49 (1) (*c*). All notices required to be served under this Agreement will be governed by L. P. Act. 1925, s. 196.

The Schedule.

Date.	Total amount already paid up to and including this date.	Discount price which will be accepted in satisfaction of balance of purchase-money on this date.	Sum representing the Purchaser's vested interest on this date.
	£	£	£
—— ..... 19—	0	195	0
,, ... 19—	12	190	5
,, ... 19—	24	185	10
,, ... 19—	36	180	15
,, ... 19—	48	175	20
,, ... 19—	60	170	25
,, ... 19—	72	165	30
,, ... 19—	84	159	36
,, ... 19—	96	153	42
,, ... 19—	108	147	48
,, ... 19—	120	141	54
,, ... 19—	132	135	60
,, ... 19—	144	129	66
,, ... 19—	156	123	72
,, ... 19—	168	117	78
,, ... 19—	180	111	84
,, ... 19—	192	105	90
,, ... 19—	204	99	96
,, ... 19—	216	93	102
,, ... 19—	228	87	108
,, ... 19—	240	81	114
,, ... 19—	252	75	120
,, ... 19—	264	68	127
,, ... 19—	276	61	134
,, ... 19—	288	54	141
,, ... 19—	300	46	149
,, ... 19—	312	38	157
,, ... 19—	324	30	165
,, ... 19—	336	21	174
,, ... 19—	348	12	183
,, ... 19—	360	..	195

Note.—In this Schedule it is supposed that the present value of the property is £195, which is to be paid with interest, by equal instalments of principal and interest combined, spread over thirty years, and the annual sum required for this purpose is supposed to be £12, interest being calculated at 4 per cent. or thereabouts. £360 is the total amount of the annual payments

No. VII.

AGREEMENT *for* SALE *of a* LEASEHOLD SHOP *and the* STOCK-IN-TRADE *and* GOODWILL *of the* BUSINESS *carried on upon the Premises.* (*Equitable Interest in Legal Estate.*)

AN AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part and C. D., of, &c. (hereinafter called the Purchaser), of the other part WHEREBY IT IS AGREED as follows :—

Agreement for sale and purchase of leasehold premises and goodwill for a fixed sum.

1. (1) The Vendor shall sell, and the Purchaser shall purchase, the leasehold messuage and shop, being No. —, —— Street, in the town of ——, held under Lease, dated the —— day of ——, for the residue of a term of —— years from the —— day of ——, and the term and interest granted by the said Lease subject to the yearly rent of £—— thereby reserved, and to the lessee's covenants and the conditions therein contained, but free from incumbrances, and also the goodwill (*a*) of the business of a —— now carried on by the Vendor on the premises for the price of £——, exclusive of the value of the tenant's fixtures.

Goodwill.

(2) The Purchaser having investigated the title of the Vendor to the said leasehold property and goodwill hereby accepts the same.(*b*)

(*a*) See also Forms Nos. 9 and 10, "Special Conditions," pp. 243-4, *supra*. If the title is registered the form will require small verbal modifications.

Whether vendor of goodwill can carry on similar business in neighbourhood.

After the sale of the goodwill of a business a vendor may, in the absence of agreement to the contrary, carry on a similar business in the same place, and solicit custom in a public manner, but he must not apply to any of the old customers privately by letter, or by a traveller ask them to deal with him: *Trego* v. *Hunt* [1896], A. C. 7; 65 L. J. Ch. 1; *Jennings* v. *J.* [1898], 1 Ch. 378: 67 L. J. Ch. 190; *Re David and Matthews* [1899], 1 Ch. 378; 68 L. J. Ch. 184; *Gillingham* v. *Beddow* [1900], 2 Ch. 242; 69 L. J. Ch. 527; *Curl Brothers, Ltd.* v. *Webster* [1904], 1 Ch. 685; 73 L. J. Ch. 540; *Pomeroy* v. *Scale* [1906], 22 T. L. R. 795; and see *Fine Cotton Spinners, &c.* v. *Harwood* [1907], 2 Ch. 185; 76 L. J. Ch. 670; though he will not be restrained from dealing with them: *Leggott* v. *Barrett* (1880), 15 Ch. D. 306; 51 L. J. Ch. 90. It follows that on a sale of a goodwill the vendor should, if it is so intended, expressly covenant not to carry on a similar business within a certain distance, as provided in the above Precedent. If, on the other hand, it is intended that he shall have this liberty, it is desirable, in order to prevent misunderstanding, to explain this in the contract. As to the application of the rule to a compulsory sale, see *Walker* v. *Mottram* (1881), 19 Ch. D. 355; 51 L. J. Ch. 108; *Green* v. *Morris* [1914], 1 Ch. 562; 83 L. J. Ch. 559.

Stamps.

As to stamp duty where the goodwill is sold apart from the property, see *West London Syndicate* v. *I. R. C.* [1898], 2 Q. B. 507; 67 L. J. Q. B. 956; Highmore, 4th ed., 158, 176.

Investigation of books.

(*b*) This assumes that the purchaser has also investigated the books of the business before the contract is signed.

Tenant's fixtures and book debts at a valuation.

2. (1) The Vendor shall sell, and the Purchaser shall purchase, the tenant's fixtures in and about the property, and the book and other debts, which on the —— day of —— next (*the day fixed for completion*) shall be due and owing to the Vendor in respect of the said business, and the benefit of all contracts and engagements entered into with him in respect of the said business, and which shall be then subsisting, in consideration of the Purchaser taking upon himself all the debts and liabilities incurred by the Vendor in respect of the said business and which shall be then subsisting, and of his paying to the Vendor such a sum of money as shall be ascertained by valuation to be the difference between the value of the fixtures and things by this clause agreed to be sold and the amount of the said debts and liabilities.

Purchaser undertaking to pay debts and liabilities.

(2) If the amount of the said debts and liabilities shall exceed the value of the said fixtures and things the excess shall be deducted from the said price of £——.

Deposit and payment of balance of purchase-money.

3. (1) The Purchaser shall, immediately after the signing of this Agreement, pay to the Vendor the sum of £—— by way of deposit.

(2) The balance of the purchase-money, including the amount of the aforesaid valuation, shall be paid on the —— day of —— next, at the office of, &c., and if not paid on that day shall bear interest at the rate of £— per cent. per annum computed from that day until the actual payment thereof [*or, if the purchase-money is to be paid by instalments*, the balance of the purchase-money, including the amount of the aforesaid valuation, shall be paid by —— equal yearly instalments, the first thereof to be paid on the said —— day of —— next, and the remaining instalments to be paid on every —— day of —— until the whole shall be paid. The instalments of purchase-money for the time being remaining unpaid shall bear interest at the rate of £— per cent. per annum, computed from the —— day of —— next, which interest shall be paid at the same times as the instalments].

[Purchase-money to be paid by instalments.]

Vendor to assign on completion.

4. (1) Upon payment of the balance of the said purchase-money [*or* of the instalment of purchase-money hereby made payable on the —— day of ——], the Vendor shall execute to the Purchaser a proper assignment of the property, such assignment to be prepared by and at the expense of the Purchaser.

To covenant not to carry on a similar business.

(2) The Vendor shall, in such assignment, covenant with the Purchaser not to carry on a similar business in the said

town of ——, or within a distance of —— miles therefrom [*or* and the Vendor shall in and by such assignment covenant with the Purchaser to use his best endeavours to secure to the Purchaser the full advantage of the connexion and custom of the Vendor in the said business, but so that he shall not be required to incur any expense in so doing. AND ALSO that he will not at any time [*or* during a term of —— years from the date hereof], either alone or jointly, or in partnership with or as agent or manager for any other person or persons, and either directly or indirectly carry on or be concerned or interested in, or assist any other person or persons to carry on or be concerned or obtain any interest in, the business of a —— (*c*) in the said town of ——, or within —— miles therefrom].(*d*)

(3) The Purchaser shall in such assignment covenant with the Vendor to pay all the debts and liabilities hereby agreed to be taken over by the Purchaser and to indemnify the Vendor therefrom.

[Purchaser to secure unpaid instalments of purchase-money by mortgage.]

[5. (1) Concurrently with the execution of the said assignment, the Purchaser, and two sureties to be approved by the Vendor, shall execute to the Vendor their joint and several covenant for the payment of the remaining instalments of the said purchase-money, and the interest thereon at the times and in the manner above provided.

(2) The Purchaser shall also mortgage the said leasehold property, including the tenant's fixtures and the goodwill of the said business, to the Vendor, for further securing the payment of the said instalments and interest, the mortgage to be prepared

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Covenants in restraint of trade.

(*c*) Covenants of this kind are *prima facie* void, as against public policy, but are valid if they are for valuable consideration, impose no more restrictions than are reasonably necessary to protect the business of the covenantee, are otherwise reasonable with reference to the interests of both parties, and are not contrary to the public interest; see *Continental Tyre Co.* v. *Heath* [1913], 29 T. L. R. 308; *Caribonum Co.* v. *Le Couch* [1913], 109 L. T. 587; *Nevanas Co.* v. *Walker & Foreman* [1914], 1 Ch. 413; 83 L. J. Ch. 380; *British Concrete Co.* v. *Schelff* [1921], 2 Ch. 563.

(*d*) If there is any risk of the vendor's wife carrying on a similar business with her separate estate, she should be required to enter into a covenant not to do so: see *Smith* v. *Hancock* [1894], 2 Ch. 377; 63 L. J. Ch. 477. See also as to the construction of the words "concerned or interested," *Gophir Diamond Co.* v. *Wood* [1902], 1 Ch. 950; 71 L. J. Ch. 550; *Cory, Ltd.* v. *Harrison* [1906] A. C. 274; 75 L. J. Ch. 714; also *Ramoneur* v. *Brixey* [1911], 104 L. T. 809; *Woodbridge* v. *Bellamy* [1911], 1 Ch. 326; 80 L. J. Ch. 265; *Hadsley* v. *Dayer-Smith* [1914], A. C. 979; 83 L. J. Ch. 770; and "not to practice," *Sewell* v. *Wright* [1906], 50 Sol. J. 223.

by the Vendor at the expense of the Purchaser, and to contain a charge by way of legal mortgage or sub-demise of the said term and such powers and provisions generally as the Vendor may reasonably require.]

Vendor to remain in possession and proprietor of business until day fixed for completion.

6. (1) The Vendor shall remain in possession of the property and pay the rent and outgoings payable in respect thereof up to the said —— day of —— next, and such rent and outgoings shall, if necessary, be apportioned for the purpose of this clause.

(2) The Vendor shall during the same period remain the proprietor of the said business, but the Purchaser shall act as his manager, and shall receive the weekly sum of £—— by way of salary as such manager.

Agreement to sell stock-in-trade.

7. (1) The Vendor shall sell, and the Purchaser shall purchase: All the stock-in-trade (*e*) consisting of goods and chattels capable of passing by delivery, which on the said —— day of —— next, shall belong to the Vendor in respect of the said business, at a sum to be ascertained by valuation.

(2) The purchase-money for the said stock-in-trade shall be paid on the said —— day of —— next, and if not paid on that day shall bear interest at the rate of £— per cent. per annum from that day until the actual payment thereof.

Valuation.

8. (1) Every valuation for the purposes of this Agreement shall be made by L. M., of, &c., who is appointed for this purpose by the Vendor, and N. O., of, &c., who is appointed for this purpose by the Purchaser, or in case the said valuers shall disagree, then by P. Q., of, &c., who has been appointed umpire by the valuers.

(2) If either of the valuers shall die before the valuation is completed or shall refuse to act, another valuer shall be appointed in his place by the party by whom the deceased or refusing valuer was appointed.

(3) If the umpire shall die before the valuation is completed, or shall refuse to act, the valuers shall appoint another umpire.

AS WITNESS, &c.

Sale of stock-in-trade.

(*e*) The stock-in-trade should be valued and sold separately in order to avoid the payment of stamp duty. On completion, they should be delivered to the purchaser, and the vendor should give him a receipt for the purchase-money. See ss. 41—43 of the Sale of Goods Act, 1893, as to a vendor's lien in respect of goods which have not been paid for.

No. VIII.

AGREEMENT *for the* SALE *of* LAND *subject to the* APPROVAL *of the* COURT.(*x*) (*Equitable Interest in Legal Estate.*)

Note.—The General Conditions of 1925 *can be used and the following provisions should be added to the Special Conditions prefixed thereto.*

Vendor to take steps to obtain approval of this Agreement by the court.

1. THE Vendor shall at his own expense forthwith take and carry to completion all necessary steps and proceedings, and use his best endeavours to obtain by means of an application to the Court its approval of this Agreement.

Agreement to be void unless approval of court obtained within a given time.

2. THIS Agreement shall, notwithstanding anything to the contrary hereinbefore contained, be void unless the Vendor shall at his own expense, within —— months from the date hereof obtain the approval of the same by the Court either in its general form and terms, or with such variations as shall within the like time be assented to by the Vendor and Purchaser.

AS WITNESS, &c.

No. IX.

AGREEMENT *for the* SALE *of a* LIFE INTEREST *in* LAND.(*a*) (*Equitable Interest.*)

AN AGREEMENT, &c. (*date and parties as in Precedent* IA of this Group *unless the General Conditions of* 1925 *are used when the parcels* (*clause* 1, *infra*) *will be placed in the particulars and the last clause will be added to the Special Conditions*).

WHEREBY IT IS AGREED as follows:—

Agreement to sell and purchase.

1. THE Vendor shall sell and the Purchaser shall purchase, ALL THAT equitable interest for life, without impeachment of waste, of the Vendor in—

Sale with leave of court.

(*x*) This Precedent is not applicable where there is an order for sale and a reference to one of the conveyancing counsel of the court (see General Conditions, Prec. II, p. 380, *supra*), but only where the vendor has power to sell with the consent of the court, *e.g.*, where there is an administration action but no absolute order for sale has been made, or where a sale by auction under the court has failed.

Equitable interests.

(*a*) A life interest can only take effect as an equitable interest, even though the legal fee simple is vested in the tenant for life as the trustee of the settled land: L. P. Act, 1925, s. 1; 1st Sch., Pt. I; S. L. Act, 1925, ss. 4—10; 2nd Sch. But a purchaser of the life interest (including a mortgagee) will, where apart from the statutory restrictions on the creation of a legal estate the tenant for life would have had a legal estate (which must nearly always be the case), have the same rights and remedies as if the life interest had been or remained a legal estate (S. L. Act, 1925, s. 111); but he is not

Rights of purchaser of a life interest.

All, &c. (*parcels*), at the price of £——.

Other conditions as in Precedent 1A, *of this group, so far as applicable, adding the following :—*

THIS Agreement shall not be rendered void, or be otherwise affected by the death of the Vendor before the said —— day of —— next (*date of completion*). Agreement not to be rendered void by death of Vendor.

AS WITNESS, &c.

[*Add schedule of property.*]

No. X.

AGREEMENT *for the* SALE *of an* INTEREST *in* REMAINDER *in* FREEHOLDS. (*Equitable Interest.*)

AN AGREEMENT made the —— day of ——, BETWEEN C. D., of, &c. (hereinafter called the Vendor), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part Parties.

WHEREBY IT IS AGREED as follows :—

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entitled to the possession of the title deeds relating to the settled land, though he obtains a right to production and safe custody : *ib.* The rights of the purchaser are governed by *ib.*, s. 104, which applies whether the assignment was made before or after the interest was in possession.

The tenant for life cannot convey the legal estate in the settled land which is vested in him as a trustee, until a vesting instrument is executed : *ib.*, s. 13 ; though this section does not prevent his dealing with his equitable interests, or prevent a purchaser, without notice of the settlement, acquiring a legal estate. When once a vesting instrument has been executed he cannot convey a legal estate except in exercise of his statutory powers, and subject to complying with the statutory requirements, namely, the capital money must be paid to at least two individuals as trustees or to a trust corporation, or into court (*ib.*, s. 18) ; but if no capital money arises then a conveyance by the tenant for life for any purpose authorised by the S. L. Act, 1925 (*e.g.*, a lease) will pass a legal estate to a purchaser though there may be no S. L. Act trustees : *ib.*, s. 110 (4). Restriction on conveyance of legal estate.

Nor on his bankruptcy will the legal estate pass to the trustee (*ib.*, s. 103) ; while on his death it will pass under Ad. of E. Act, 1925, to his special personal representatives, namely, the S. L. Act trustees, unless in some special case the Probate Division grant administration to other persons. Even then the court can, by order, vest it in the S. L. Act trustees. Devolution of legal estate on bankruptcy or death.

A tenant for life cannot divest himself of the statutory powers conferred on him by the S. L. Act, 1925, see s. 104 (*Re Mundy and Roper* [1899], 1 Ch. 275 ; 68 L. J. Ch. 135 ; *Re Lord Wimborne and Browne* [1904], 1 Ch. 537 ; 73 L. J. Ch. 270 ; and see *Re Dickin* [1908], 1 Ch. 213 ; 77 L. J. Ch. 177) ; save that if he surrenders the life interest to the next remainderman, and the latter would, if the tenant for life were dead, have the powers of a tenant for life, then the remainderman will become the tenant for life and can exercise the powers (S. L. Act, 1925, s. 105) ; that section confirms the view adopted in *Re Bruen* [1911], 1 Ir. R. 76, and applies it to England. Effect on statutory powers of sale of life interest. Surrender to remainderman.

Under L. P. Act, 1925, s. 137, notice in writing of a sale or mortgage of a life interest in land must be given to the S. L. Act trustees, unless under Notices of dealings with a life interest.

Agreement to sell and purchase.

1. THE Vendor shall sell, and the Purchaser shall purchase ALL that the remainder in fee simple expectant on the life interest of A. B., of, &c., who was born on the —— under a Settlement, dated, &c., and made, &c. (*date and parties*), in the property described in the Schedule hereto [*or if the General Conditions of* 1925 *are used* described in the next clause] subject to [*or*, free from] the duty or duties (if any) which will become payable in respect thereof on the death of the said A. B.,(*a*) at the price of £——.

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s. 138 a trust corporation has been appointed to receive notices in place of the trustees and to keep a register thereof, in which case the notice should be given to the trust corporation. In the case of registered land the notice will take the form of an application to the registrar to enter a priority caution (for a mortgage) or inhibition (for a sale) in the Minor Interests Index under L. R. Act, 1925, s. 102, and the rule made thereunder; see also ss. 54 (1), 144 (1) (xxiii). Where the land is vested in trustees for sale, then the notice should be given to them or other estate owners, save where notice has to be given to a trust corporation or to the land registrar as above. Any notice given to the trustees must then be forwarded to the trust corporation or to the land registrar.

Documents of title.

The vendor cannot hand over the deeds relating to the settled land, but the purchaser of the life interest obtains an implied statutory right to production and safe custody: S. L. Act, 1925, s. 111.

Interests in remainder and executory interests.

(*a*) All interests in remainder, like life interests, can only take effect as equitable interests: L. P. Act, 1925, s. 1; 1st Sch., Pt. I; S. L. Act, 1925, ss. 4-10; 2nd Sch. The same principle applies to all executory interests, but rights of entry exercisable over or in respect of a legal term of years absolute, or annexed for any purpose to a legal rentcharge (*i.e.*, a perpetual rentcharge, or one held for a term of years absolute) take effect as legal interests: L. P. Act, 1925, s. 1 (2) (*e*). Though a fee simple in possession may be liable to be divested under the Lands Clauses Acts, School Sites Acts or similar statutes, or to be determined by the dissolution of a corporation, still it remains a legal estate: *ib.*, s. 7 (1), (2). An estate in fee simple subject to a lease, remains a legal estate for it is in "possession" within the definition in L. P. Act, 1925, s. 205 (1) (xix). Similar notices in writing should be given to S. L. Act trustees, trust corporations, or the registrar, on a dealing with an interest in remainder or other equitable interest in land as are required on a dealing with a life interest (see note to last Prec.), but in this case notice should generally be given to the tenant for life or other estate owner in whom the legal estate in the land is vested on trusts, as well as to the S. L. Act trustees. If the interest sold is an interest in the proceeds of sale then the notice must be given to the trustees for sale. On the death of the tenant for life the purchaser will have to pay estate duty under the Fin. Act, 1894, as amended by the Fin. (1909-10) Act, 1910. Settlement estate duty has been abolished by the Fin. Act, 1914, s. 14. Under the Fin. (1909-10) Act, 1910, s. 58 (2), succession duty will also be payable whether the remainderman is a lineal descendant of the tenant for life or not, unless the case comes within one of the exemptions mentioned in that section.

What special interests remain legal estates.

Notices on dealings with remainders, &c.

Documents of title.

Estate and succession duties payable on death of tenant for life.

Duties payable if purchaser dies before tenant for life.

If the purchaser dies before the tenant for life, his representative will be liable to pay estate duty as on property in expectancy passing on the death of the purchaser; but the payment may be postponed until the death of the tenant for life; and the rate of duty will be ascertained by aggregating the

2. [*Insert general conditions and special conditions, if required, as in Precedent* IA *of this group unless the General Conditions of* 1925 *are used when the parcels should be inserted in the particulars and the other provisions in the Special Conditions prefixed to that form.*]

[3. (*To be inserted if the death duties are to be commuted or indemnified against by the Vendor.*)

Vendor to commute death duties

(1) The Vendor shall forthwith apply to the Commissioners of Inland Revenue to commute the duties which will become payable in respect of the property on the death of the said A. B. to the intent that the property may be conveyed to the Purchaser free from any charge for duties.

(2) If the said Commissioners shall refuse to commute the said duties, or if the terms of commutation required by them shall be such as the Vendor will not agree to, then and in such case the Vendor shall in the conveyance covenant with the Purchaser to pay the said duties when the same shall become payable and to keep indemnified the Purchaser and the property against the same.

or to indemnify Purchaser against same.

(3) The Vendor shall also in that case allow the sum of £——, part of the purchase-money, to be set apart in the names of two trustees, one to be nominated by the Vendor and the other by

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property passing on the death of the purchaser, and not the property passing on the death of the tenant for life: Fin. Act. 1894, s. 7 (6), (10). The devisee, or person interested under Ad. of E. Act, 1925, or personal representatives on his behalf, will have to pay succession duty as on a succession derived from the purchaser.

Having regard to the uncertainty as to the rate, and therefore as to the amount of the duty which will be payable, a purchaser will sometimes decline to purchase subject to it, and will insist on the vendor either commuting it or indemnifying him against it, *e.g.*, by taking out a policy.

It should be borne in mind that the tenant for life of full age, and on his death his special personal representatives (*i.e.*, the S. L. Act trustees) will be able to sell the property without the consent of the purchaser: *Wheelwright* v. *Walker* (1883), 23 Ch. D. 752; 52 L. J. Ch. 274.

No land charge authorised.

No right is given to register a land charge to protect an assignment of a life interest or a remainder under a settlement, as the notice to the S. L. Act trustees or to the trust corporation is a sufficient protection now that capital money must be paid to not less than two individuals or to a trust corporation.

Giving effect to equitable interests.

When the remainder falls into possession the land will not be conveyed to the purchaser so long as a settlement subsists (*e.g.*, by reason of the subsistence of family charges), for the statutory powers do not pass to the purchaser: S. L. Act, 1925, s. 104; but (unless an order is made under s. 24) remain exercisable by the vendor. If the vendor has disposed of all his interest the special personal representatives will retain the legal estate and their powers (*ib.*, s. 110 (3)) till they can properly convey the legal estate under s. 16 to the purchaser by means of an assent.

the Purchaser, to be held by them as an indemnity fund for securing the performance of the Vendor's covenant, and, subject thereto, in trust for the Vendor, the said indemnity fund in the meantime to be invested in or upon any investments authorised by law for the investment of trust money and the income thereof to be paid to the Vendor.]

As to deeds in possession of tenant for life.(*b*)

(4) The documents of title relating to the premises are in the custody of the said A. B. as tenant for life, and on his death such of the said documents (other than the said settlement and any appointments of new trustees thereof) as relate exclusively to the premises shall as soon as the settlement has ceased to subsist in regard to the property hereby agreed to be sold be delivered to the Purchaser, and such of them as relate also to other property of the Vendor shall be retained by him, and he shall at the cost of the Purchaser give to him the usual statutory acknowledgment and undertaking in respect of documents so retained, including the said settlement and appointments of new trustees.

AS WITNESS, &c.

THE SCHEDULE.

No. XI.

AGREEMENT *for* SALE *of* FREEHOLDS *subject to* PERPETUAL YEARLY RENTCHARGES. (*Equitable Interest in Legal Estate*).(*a*)

The General Conditions of 1925 *can be used; the parcels will be placed in the particulars thus—*

Parcels.

1. ALL the property situated in the Parish of ——, in the County of ——, and more particularly described in the next clause hereto and the fee simple thereof in possession, subject to a perpetual yearly rentcharge of £—— created by a Conveyance dated the —— day of —— [*or if there are several rentcharges*, more particularly described in the fourth column of the next

Documents of title.

(*b*) As this is a sale by a remainderman of his equitable interest, s. 111 of the S. L. Act, 1925, does not apply.

Receipts for last payment of rent.

(*a*) Though L. P. Act, 1925, s. 45 (2) and (3) only applies to rent reserved by leases and underleases, no express condition as to the effect of the production of the receipt for the rentcharge is required if the General Conditions of 1925 are made applicable, see clause 13 (2) of those conditions.

Covenant for indemnity.

The requisite covenant to keep the vendor, &c., indemnified against the rents will be implied under L. P. Act, 1925, s. 77 (1) (*a*).

clause, and the fee simple thereof in possession, subject to the respective perpetual yearly rentcharges mentioned in the third column of that clause created by the respective Conveyances the dates and parties whereof are mentioned in the first and second columns of that clause] and to the covenants and condition contained in the same Conveyances as to buildings and otherwise, but in other respects free from incumbrances.

2. Particulars of the lands hereby agreed to be sold (*b*) [and of the aforesaid rentcharges and the Conveyances creating the same].

Date of Conveyance.	Parties to Conveyance.	Yearly Rentcharge.	Property agreed to be sold.

No. XII.

AGREEMENT *for* SALE *of* PERPETUAL YEARLY RENTCHARGES *charged on* FREEHOLDS.(*a*) (*Equitable Interests in Legal Estates.*)

The General Conditions of 1925 *can be used ; the parcels will be placed in the particulars thus—*

1. ALL AND SINGULAR the perpetual yearly rentcharges mentioned in the next clause hereto, and secured on the property mentioned in that clause Together with all powers and remedies for securing and compelling payment of the same conferred by law or by the respective Conveyances mentioned in that clause so far as the said powers and remedies are valid or capable of being enforced. Parcels.

2. Particulars of the rentcharges agreed to be sold :

Amount of yearly rentcharge.	Property Charged.	Date of Conveyance.	Parties to Conveyance.

(*b*) If there is only one rentcharge this clause will contain merely a description of the property.

(*a*) This Precedent applies where land has been conveyed to a purchaser with a reservation of a rentcharge to the vendor (*e.g.*, before 1926 by means of the Statute of Uses, and, after 1925, under L. P. Act, 1925, s. 65), and the rent is being sold. The powers and remedies conferred by L. P. Act, 1925, s. 121, apply to perpetual rentcharges created by an instrument after 1881.

The following can if required be added to the Special Conditions—

(1) No objection shall be taken on the ground that any of the powers and remedies expressed to be conferred by such of the said Conveyances as are dated before 1926 or any of them are invalid.(*b*)

(2) The Purchaser shall be furnished with a list of the names and addresses of the persons from whom the respective rentcharges were last received, but shall not be entitled to any abstract or evidence of the title of those persons to the land on which the said rentcharges are charged.

No. XIII.

AGREEMENT *for the* SALE *of an* ADVOWSON.(*a*) (*Equitable Interest in Legal Estate.*)

The General Conditions of 1925 *can be used ; the parcels will be described in the particulars thus—*

ALL that the advowson and perpetual right of presentation of and to the Rectory and Parish Church of ——, in the County of ——, and the fee simple thereof.

Perpetuities.

(*b*) If the conveyances made before 1926 contain a power to re-enter and wholly dispossess the owner of the land on non-payment of the rents, &c., this may be void as being too remote. The powers and remedies conferred by L. P. Act, 1925, s. 121, and similar ones conferred by the grantor are not void for remoteness: *ib.* If the conveyance is made after 1925 then an absolute power of re-entry attached to a legal rentcharge is not affected by the perpetuity rule: L. P. Act, 1925, s. 4 (3); for the power is treated as a legal estate: *ib.*, s. 1. For further restrictions on the perpetuity rule, see *ib.*, s. 162.

(*a*) See L. P. Act, 1925, s. 201, "hereditament" means any real property which on an intestacy occurring before 1926 might have devolved on an heir (*ib.*, s. 205 (1) (ix)); this definition excludes a personal inheritance. Since the passing of the Benefices Act, 1898, a transfer of a right of patronage of a benefice is invalid unless the following conditions are complied with, viz.. (1) It must be registered in the Diocesan Registry within one month from its date or within such extended time as under special circumstances the bishop may allow (s. 1 (1) (*a*) and see s. 11). (2) It must transfer the whole interest of the transferor (s. 1 (1) (*b*)). (3) More than twelve months must have elapsed since the last institution: s. 1 (1) (*c*).

Restrictions on transfer of right of patronage.

Sale by auction forbidden except in certain cases.

An advowson cannot be sold by auction save in conjunction with a manor or with an estate in land of not less then 100 acres situated in the same parish or in an adjoining parish or belonging to the same owner: s. 1 (2).

Certain agreements affecting rights of patronage forbidden.

An agreement for any exercise of a right of patronage in favour or on the nomination of any particular person, or any agreement on the transfer of a right of patronage for the retransfer of the right or for postponing payment of any part of the purchase-money until a vacancy or for more than three months, or for the payment of interest until a vacancy or for more than three months, or for any payment in respect of the date at which a vacancy

The following special conditions can be added.

(1) The Vendor shall, within —— days from the date of this Agreement, deliver to the Purchaser or his solicitor an abstract of title commencing with a Deed dated the —— day of —— (being a conveyance on a sale, *or as the case may be*), since which time there have been —— presentations to the benefice.

Delivery of abstract and commencement of title.

occurs, or for the resignation of a transferee in favour of any person, is invalid: s. 1 (3).

The expression "transfer" as above used includes any conveyance or assurance passing or creating any legal or equitable interest *inter vivos* and any agreement for any such conveyance or assurance, but not a transmission by operation of law or a transfer on the appointment of a new trustee where no beneficial interest passes: s. 1 (6). The Act did not prevent the reservation or limitation in a family settlement of a life interest to the settlor or in a mortgage the reservation of a right of redemption: s. 1 (7).

Definition of transfer.

A bishop may refuse to institute a presentee to a benefice if at the date of the vacancy not more than one year has elasped since a transfer of the right of patronage, unless it be proved that the transfer was not effected in view of the probability of a vacancy within the year. He may also refuse to institute on other grounds set out in the Act: s. 2.

Grounds on which bishop may refuse to institute.

If the date of completion is fixed at a later period than one month, or if in fact the purchase is not completed within that time, the contract will require to be registered, being within the definition of a transfer in s. 1 (6).

Registration of contract, when necessary.

If the incumbent dies between the date of the contract and its completion, the vendor will be bound, on the purchaser accepting the title and paying the purchase-money, to present his nominee, there being nothing in the Act to alter the rule of equity in this respect. But the bishop may refuse to institute the presentee if the case falls within s. 2 (1).

Death of incumbent before completion.

Under the Benefices Act, 1898 (Amendment) Measure, 1923, after two presentations (made after the 14th July, 1924), it will not be possible to dispose of an advowson by way of sale or other transfer for valuable consideration.

The Benefices Act, 1898 (Amendment) Measure, 1923.

The operation of this provision may be immediately commenced by a declaration by deed executed by any person owning the advowson beneficially or in fee tail in possession, such deed to be registered in the office of the diocese.

The advowson will become inalienable, save by will or settlement, from the date of registration of this deed.

Subject as above, the fee simple of a settled advowson can be sold by a tenant for life under the S. L. Act, 1925, and it is conceived that he can by virtue of his equitable interest also sell the presentations which may fall vacant during his life: Benefices Act, 1898, s. 1 (1) (*b*). On such a sale the purchaser should see that the settlement was not executed within twelve months from the last institution or admission: *ib.*, s. 1 (1) (*c*). For the Benefices Rules, 1898 and 1899, see 1899, W. N., Part II, pp. 1, 79, and Current Index lxix, lxxiii. See also, as to advowsons generally, Dart, 7th ed., 269, 271; R. P. Limitation Act, 1833, ss. 30—34; Pluralities Act, 1838; *Rickard* v. *Graham* [1910], 1 Ch. 722; 79 L. J. Ch. 378. As to estate duty on advowsons, see Fin. Act, 1894, s. 15 (4), as amended by Fin. (1909-10) Act, 1910; and Austen-Cartmell, 5th ed., 164; *A.-G.* v. *Peek* [1913], 2 K. B. 487; 82 L. J. K. B. 767. As to the position where, by an act of union, two parishes have been consolidated, see *Lord Elcho* v. *Andrews* [1910], 1 Ch. 706; 79 L. J. Ch. 586; *Re Macnamara* [1911], 104 L. T. 771. The mortgagee of an advowson may be barred by *laches*. *Brooks* v. *Muckleston* [1909], 2 Ch. 519; 79 L. J. Ch. 12.

Sale of settled advowson.

(2) The Purchaser shall also be furnished with a list of the presentations, admissions, or institutions believed to have been made since the date fixed for the commencement of title, but the Vendor shall not be required to verify such list by statutory declaration or otherwise. [No objection shall be taken on the ground that the title shown does not cover three entire incumbencies.]

No. XIV.

AGREEMENT *for* SALE *to a* RAILWAY COMPANY *where* MINERALS *are* INCLUDED *in the* SALE ;(*a*) PURCHASE-MONEY *to include* COMPENSATION *for* SEVERANCE ; COMPANY *to* MAKE *specified* ACCOMMODATION WORKS. (*Equitable Interest in Legal Estate.*)

Parties.

AN AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and

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L. Clauses Act enables land to be conveyed for public purposes.

(*a*) The L. Clauses Act, 1845 (which is incorporated with every special Act passed since the 8th May, 1845), authorising the taking of land for undertakings of a public nature, except so far as its provisions may be expressly varied by the special Act, and is also incorporated by express provision in numerous public Acts, *e.g.*, the Education Acts and the Public Health Acts, enables all persons seised, possessed, or entitled of or to any land authorised by the special Act to be taken to sell and convey the same to the promoters of the undertaking: ss. 6, 7.

Compensation payable for severance or other damage where land taken.

The Act provides that in estimating the purchase-money or compensation to be paid by the promoters, regard is to be had not only to the value of the land taken, but also to the damage (if any) to be sustained by the owner by reason of the severing of the lands taken from his other lands, or otherwise injuriously affecting such other lands by the exercise of the statutory powers: s. 63; see *Re S. E. Ry. Co. & L. C. C.* [1915], 2 Ch. 252; 84 L. J. Ch. 756. The words "injuriously affected" have been held to cover a depreciation of value of the vendor's other land by reason of the use to which the land taken is intended to be applied, *e.g.*, for sewage works: *Cowper-Essex* v. *Acton Local Board* (1889), 14 A. C. 153; 58 L. J. Q. B. 594. A claim to compensation is assignable: *Dawson* v. *G. N. and City Ry.* [1905], 1 K. B. 260; 74 L. J. K. B. 190. An action to enforce a claim for compensation under an award must be brought within six years of the award: *Turner* v. *Mid. Ry.* [1911], 1 K. B. 832; 80 L. J. K. B. 516.

Compensation for injury where no land taken.

Compensation may also be payable in cases where land is injuriously affected, but no part of it is actually taken; see Browne & Theobald, 4th ed., 180, *et seq.*

Compensation money not to be paid into court.

Where title can be made without payment of the compensation money into court, it must be made in this way, unless the purchaser, to avoid expense or delay, or for any special reason, considers it expedient that the money should be paid into court: L. P. Act, 1925, s. 42 (7). Save in cases coming within L. Clauses Act, 1845, s. 77, it will after 1925 be possible to make title without payment into court; the effect of s. 77 is preserved by L. P. Act, 1925, s. 7 (3) (*c*),

the —— Railway Company (hereinafter called the Purchasers) [by their Agent —— —— Esquire] (*b*) of the other part.

WHEREBY IT IS AGREED as follows :—

1. THE Vendor (*c*) shall sell, and the Purchasers shall purchase : Agreement to sell and purchase.

ALL those pieces of land described in the — Schedule hereto, and the (*d*) mines and minerals (if any) thereunder, and the fee simple thereof in possession free from incumbrances, for the sum of £——, such sum to be in full satisfaction and compensation for all damage to be sustained by the Vendor by reason of the severing of the said lands from his other lands or otherwise injuriously affecting such other lands by the exercise of the powers of the —— Act, 19— (hereinafter called the special Act), or any Act incorporated therewith [and to be in full satisfaction also for all accommodation works, except as provided in clause 2 hereof (*e*)].

[2. THE Purchasers shall, as soon as conveniently can be, make and for ever maintain the several works mentioned in the —— Schedule hereto for the accommodation of the adjoining lands of the Vendor and the owners and occupiers for the time being of the same.(*e*)] [Accommodation works.]

(*b*) Under the Companies (Consolidation) Act, 1908, s. 76, any person acting under the express or implied authority of the company may execute the agreement on behalf of the company, instead of the company executing under their common seal, but this only applies to limited companies.

Under L. P. Act, 1925, s. 74 (2), the directors or governing body of any corporation may, by resolution or otherwise, appoint an agent, either generally or in any particular case, to execute on behalf of the corporation, any instrument not under seal in relation to any matters within the powers of the corporation. Power for agents to act for corporations.

(*c*) Where the vendor is a tenant for life, limited owner or statutory owner, the sale must be made under the S. L. Act, 1925 (see General Conditions of 1925, cl. 25, relating to settled land), and not under the special power conferred by s. 7 of the L. C. C. Act, 1845, because by so doing he avoids the necessity of having a valuation under s. 9 and of paying the money into court under s. 69. A small addition can be made to the price to cover the costs of reinvestment which would otherwise be paid by the company, or the latter may agree expressly to pay these costs. Where land is held on trust for sale, the vendors must be the trustees for sale : L. P. Act, 1925, s. 28 ; where the land is vested in personal representatives they must be the vendors : Ad. of E. Act, 1925, s. 39. Sale under Settled Land Act, 1925.

(*d*) If it is intended that the purchase shall include the minerals, they must be expressly mentioned (Railways C. C. Act, 1845, s. 77) ; see also Mines (Working Facilities) Act, 1923, Pt. II, which amends the code, as respects most railway companies, applicable to the acquisition of mines. If they are to be excepted, see next Precedent. Minerals.

(*e*) In many cases it is unnecessary to make any special stipulation as to accommodation works, the rights of the vendor in this respect being sufficiently protected by R. Clauses Act, 1845, s. 68 ; and see Browne & Theobald, 4th ed., Accommodation works.

Company, if let into possession, to pay interest.

3. If the Vendor shall let the Purchasers into possession before the date fixed for completion, the Purchasers shall pay interest on the said purchase-money at the rate of £—— per cent. per annum from the day when they shall be so let into possession.

Delivery of abstract.

4. The Vendor shall, on or before the —— day of ——, deliver to the Purchasers, or their solicitor, an abstract of title to the said lands, commencing at such period (not previous to the statutory period) as the Purchasers shall require. [*The rest of the Precedent will follow Precedent* IA *or may incorporate by reference any of the clauses applicable of the General Conditions of* 1925, *with such of the following provisions as may be required.*]

Maintenance of accommodation works.

5. The conveyance shall contain proper covenants and provisions for the making and maintaining by the Purchasers of the accommodation works mentioned in the —— Schedule hereto, and a counterpart of such conveyance, duly executed by the Purchasers, shall be retained by the Vendor.

Vendor to release right of pre-emption.

6. The conveyance shall contain a release by the Vendor of his right of pre-emption under section one hundred and twenty-eight of the Lands Clauses Consolidation Act, 1845, in the event of the said lands or any part thereof being hereafter sold as superfluous land.(*f*)

Costs.(*g*)

7. The Purchasers shall pay all such costs, charges, and expenses as by section eighty-two of the Lands Clauses

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292, *et seq.*; also cases on accommodation works collected, *ib*,. 256—259; *Abrey* v. *S. E. Ry. Co.*, Times Newsp., 17th February, 1910; 54 Sol. J. 519.

Release of right of pre-emption.

(*f*) Clause 6 should not be inserted unless stipulated for by the railway company and agreed to by the vendor. Under L. P. Act, 1925, s. 186, it is conceived that the release will affect the class of persons secondly mentioned in s. 128, viz., persons entitled to the adjoining lands, whether or not those lands are identical with the land from which the land sold was originally severed. A tenant for life, with the written consent of the trustees of the settlement, can release a right of pre-emption so as to bind his successors: S. L. Act, 1925, s. 58 (2). It follows that trustees holding on trust for sale (L. P. Act, 1925, s. 28) and personal representatives (Ad. of E. Act, 1925, s. 39) have corresponding powers.

No right of pre-emption arises where land is situated in a town, or is built upon, or used for building purposes. As to what lands come within this exception, see Browne & Theobald, 4th ed., 247. A land charge must be registered to protect a right of pre-emption: L. C. Act, 1925, s. 10, Class C. (iv).

Costs under L. Clauses Act.

(*g*) S. 82 of the L. Clauses Act throws the cost of deducing, evidencing, and verifying the vendor's title on the company, including steward's fees, &c., but not the lord's fine on admission (*Re Thames Tunnel Act* [1908], 1 Ch. 493; 77 L. J. Ch. 330); steward's fees and the lord's fine will only remain material so long as the manorial incidents remain unextinguished: L. P. Act, 1922, ss. 129–131. But where the vendor dies before completion the company are not liable under the section to pay the costs of probate: *Re Elementary Education Acts* [1909], 1 Ch. 55; 78 L. J. Ch. 281. It has been held that this

Consolidation Act, 1845, are directed to be borne by the promoters of the undertaking, and shall also pay the Vendor's costs and expenses incurred in or about the preparation and execution of this Agreement, and the negotiations relating thereto (including the charges of the Vendor's surveyor for his valuation of the premises, such charges not to exceed £——).

AS WITNESS, &c.

THE [FIRST] SCHEDULE

ALL those pieces of land situated in the parish of ——, in the County of ——, containing —— or thereabouts, and numbered —— in the plans and books of reference of the intended railway, relating to the said parish of ——, and deposited with the Clerk of the Peace for the said County, and which pieces of land are delineated and coloured pink on the plan annexed hereto, together with the mines and minerals (if any) thereunder.

THE [SECOND] SCHEDULE.

(*Description of the accommodation works, if any.*)

No. XV.

AGREEMENT *for* SALE *to a* RAILWAY COMPANY *where* MINERALS *are* EXCEPTED *from the* SALE; POWER *for* COMPANY *to take* POSSESSION *before* COMPLETION *upon* DEPOSITING PURCHASE-MONEY.(*a*) (*Equitable Interest in Legal Estate.*)

AN AGREEMENT made, &c. [*date and parties as in last Precedent*]. WHEREBY IT IS AGREED as follows:— Parties.

1. THE Vendor shall sell, and the Purchasers shall purchase: Agreement to sell and purchase.

ALL those pieces of land described in the —— Schedule hereto, and the inheritance thereof in fee simple in possession free from incumbrances at the price of £——.(*b*)

section applies whether the purchase is under the compulsory powers of the Act, or the vendor is a limited owner selling under s. 7 or under the S. L. Act. 1925, or an absolute owner in fee simple: *Re Burdekin* [1895], 2 Ch. 136; 64 L. J. Ch. 561. As it is doubtful whether the section extends to the costs of the agreement and the preliminary negotiation, it is prudent to provide expressly for them.

The scale charges prescribed in Sch. I, Pt. I, of the General Order under the Solicitors' Remuneration Act, 1881, do not apply to sales under the L. Clauses Act, or any other public or private Act, under which the vendor's charges are paid by the purchaser: *Re Burdekin* [1895], 2 Ch. 136; 64 L. J. Ch. 561.

(*a*) See the notes to the last Precedent.

Position of railway company in regard to minerals.

(*b*) As mines are not expressly mentioned, they will remain the property of the vendor under this agreement (R. Clauses Act, 1845, s. 77); but a

Company to pay additional sum for severance.

2. (1) In addition to the said purchase-money of £——, the Purchasers shall pay to the Vendor the sum of £——, by way of compensation for all damage to be sustained by him by reason of the severing of the said lands from the other lands of the Vendor, and for all other damage or injury to be sustained by such other lands by reason of the formation of the intended railway and the execution of the works connected therewith.

Accommodation works. (c)

(2) The Purchasers shall be bound to make and maintain such works for the accommodation of the adjoining lands of the Vendor, and the owners and occupiers for the time being of the same, as in the absence of any agreement to the contrary they would be bound to make and maintain under the provisions of the Railways Clauses Consolidation Act, 1845.

Company may take possession on depositing purchase-money.

3. If the Purchasers shall be desirous of taking possession of the lands before the actual completion of the purchase, they shall be at liberty so to do, upon depositing the purchase-money in the bank of Messrs. —— at —— in the joint names of the Vendor and ——, and in such case the Purchasers shall pay interest upon the purchase-money from the time of taking possession until the completion of the purchase at the rate of £— per cent. per annum, and the money so deposited shall remain in the bank at the risk of the Purchasers, who shall be entitled to any interest allowed by the bank thereon.

[*Continue as in last Precedent incorporating by reference any of the clauses applicable of the General Conditions of* 1925.]

As witness, &c. [*Add Schedules as in last Precedent.*]

railway company has special power under the R. Clauses Act, 1845, ss. 78-85, as amended by Pt. II of the Mines (Working Facilities) Act, 1923, to acquire rights in the minerals sufficient to prevent danger to the railway. In *Thompson* v. *Hickman* [1907], 1 Ch. 550; 76 L. J. Ch. 254, it was decided that the presumption that, where a highway is a boundary, the sub-soil of the highway *ad medium filum viæ* passes to the grantee of the land adjoining the highway does not apply to a railway which is a boundary. Hence, as s. 77 only excepts "minerals," a doubt may arise whether the adjoining owner has power to cut through sub-soil which does not contain minerals underlying a railway for the purpose of working minerals on the further side of the railway. However, having regard to the decision in *Batten Pooll* v. *Kennedy* [1907], 1 Ch. 256; 76 L. J. Ch. 162, it is conceived that the adjoining owner has such power. There it was held that an exception of "all mines and veins of coal" entitled the owner of the minerals to construct roads in the sub-soil. It may sometimes be desirable expressly to reserve the minerals and powers of working, including the right to make roads under the land conveyed to the company, whether for the purpose of working and carrying away the minerals under that land or under any other land belonging to the owner of the minerals, but the reservation would be subject to the statutory powers of the company.

(c) See note to last Precedent as to accommodation works.

No. XVI.

NOTICE *to* TREAT *by a* RAILWAY COMPANY *to a* LANDOWNER.(*a*)

To A. B., of, &c. (*Landowner*), and to all other persons whom it may concern.

WE, the —— RAILWAY COMPANY,(*b*) do hereby, pursuant to the Lands Clauses Consolidation Act, 1845, GIVE YOU NOTICE as follows:—

1. THAT by the —— Railway Act, 19—, we are authorised to purchase and take for the purposes of the railway and works therein mentioned the lands and property described in the Schedule hereto, and that we require the same accordingly.

2. THAT we demand from you the particulars of your estate and interest in the said lands and property, and of the claims made by you in respect thereof.

3. THAT we are willing to treat for the purchase of the said lands and property, and as to the compensation to be paid to you

(*a*) L. Clauses Act, s. 18. A notice given under this section cannot generally be withdrawn without the consent of the landowner (*Tawney* v. *Lynn and Ely Ry. Co.* (1847), 16 L. J. Ch. 282; Browne & Theobald, 4th ed., 150); but it does not of itself constitute a contract. The notice must be clear: *Fisher* v. *G. W. Ry.* [1911], 1 K. B. 551; 80 L. J. K. B. 299. When, however, a price has been fixed by arbitration or otherwise, a valid contract is established with all its incidents, including the liability of the company to pay interest on the purchase-money: *Haynes* v. *H.* (1861), 1 Dr. & Sm. 426; 30 L. J. Ch. 578; *Re Battersea Park Acts* (1863), 32 Beav. 591; *Regent's Canal Co.* v. *Ware* (1857), 23 Beav. 575; 26 L. J. Ch. 566; *Re Pigott and G. W. Ry. Co.* (1887), 18 Ch. D. 146; 50 L. J. Ch. 678; *Re Cary-Elwes' Contract* [1906], 2 Ch. 143; 75 L. J. Ch. 571. As to compensation by a local authority or government department, see The Acquisition of Land (Assessment of Compensation) Act, 1919.

Notice to treat not a contract until price fixed by arbitration.

A counter-notice by the landowner under s. 92 to take the whole of the land when part only is required by the company enables the company to withdraw the first notice, and thereupon the parties are in the same position as if no notice had been given. The company may therefore give a second notice, and, if this is validly withdrawn, a third one, and so on during the term limited for compulsory purchase: *R.* v. *L. & S. W. Ry. Co.* (1848), 12 Q. B. 775; 17 L. J. Q. B. 326; *Ashton Vale Iron Co.* v. *Bristol Corpn.* [1901], 1 Ch. 591; 70 L. J. Ch. 230. As to the form of a counter notice, see *Pollard* v. *Middlesex C. C.* [1906], 95 L. T. 870.

Counter-notice by landowner enables first notice to be withdrawn.

The fact that the assessment of compensation has been commenced and possession of the land taken in the absence of a mortgagee does not preclude subsequent service of notice on him: *Cooke* v. *L. C. C.* [1911], 1 Ch. 604; 80 L. J. Ch. 423.

Where land is mortgaged.

(*b*) Sometimes the notice is given by the secretary of the railway company, under the Companies Clauses Act, 1845, s. 139; see also L. P. Act, 1925, s. 74 (2).

and all other parties concerned by reason of the execution of the said railway and works.

Dated this —— day of ——, 19—.

(Common seal of Company.)

THE SCHEDULE.(*c*)

(*To contain particulars of the land.*)

No. XVII.

AGREEMENT *between a* COMMITTEE *of* COMMONERS *and a* RAILWAY COMPANY *for the* EXTINCTION *of* RIGHTS *of* COMMON *in respect of* LAND PURCHASED *by the* COMPANY.(*a*) (*Legal Estate.*)

Parties.

THIS RELEASE is made the —— day of ——, 19—, BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., G. H., of, &c., and I. K., of, &c. (hereinafter called the Committee), of the one part, and the —— Railway Company (hereinafter called the Company), of the other part. WHEREAS—

That land part of a common is required.

(1) THE land described in the Schedule hereto is part of —— Common, in the Parish of ——, in the County of ——, and also part of the Manor of ——, and the same is required by the Company for the purposes of their railway:

As to parties entitled to common rights.

(2) THE Committee and divers other persons are entitled to commonable and other rights over or in respect of the said land:

Purchase of land by Company from lord of manor.

(3) THE Company have lately purchased from X. Y. (the lord of the manor) his right as owner of the soil of the said land, and he has accordingly conveyed the said land to the Company by a Conveyance dated the —— day of —— and made between, &c.:

Proceedings under Act to call meeting of commoners.

(4) PURSUANT to the provisions of the Lands Clauses Consolidation Act, 1845,(*b*) the Company, by advertisement inserted

(*c*) A form of claim is usually sent with the Notice to Treat. For a Precedent of the Form, see Ency. Forms and Prec., vol. 8, p. 43.

(*a*) See L. Clauses Act, 1845, ss. 99-107, and the Light Railways Act, 1896, s. 21; see also *Salmon* v. *Edwards* [1910], 1 Ch. 552; 79 L. J. Ch. 296.

Effect of L. P. Act, 1925.

(*b*) See s. 102. These rights of common, if owned in fee simple, are hereditaments within L. P. Act, 1925, s. 201 (see definition in s. 205 (1) (ix)), and are legal estates within s. 1 (2) (*a*). This statutory method of extinguishment is preserved by s. 7 (3) (*c*).

in the —— newspaper, on the —— day of ——, and again in the same newspaper on the —— day of ——, duly called a meeting of the persons entitled to commonable or other rights over or in respect of the said land, to be held at ——, on the —— day of ——, for the purpose of appointing a Committee to treat with the Company for the compensation to be paid for the extinction of such commonable or other rights and the Company caused notice of such meeting more than seven days previous to the holding thereof to be affixed upon the door of the Parish Church of ——, and also caused a like notice to be given to the said X. Y.:

Resolution at meeting appointing a Committee.

(5) PURSUANT to the said advertisements and notices, a meeting was duly held at the time and place aforesaid, and there were present thereat the Committee and other persons entitled to such commonable or other rights as aforesaid:

At such meeting it was resolved by a majority (*c*) of the persons entitled as aforesaid and present at the said meeting, that the Committee should be and they were accordingly appointed to be a committee for the purpose aforesaid:

Agreement by Committee.

(6) THE Committee have agreed (*d*) to accept the sum of £—— for the extinction of the said commonable and other rights, and

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(*c*) The majority of the commoners present at the meeting can appoint the committee, which must not exceed five in number, and will bind all absent parties.

Extinction of rights of common under L. Clauses Act, 1845.

(*d*) S. 104 provides that the committee may enter into an agreement with the promoters for the amount of compensation for the extinction of the rights of common and other rights on behalf of all the commoners, and may receive the compensation money. Until the compensation has been paid the promoters cannot enter upon the land: *Stoneham* v. *L. B. & S. C. Ry.* (1871), L. R. 7 Q. B. 1; 41 L. J. Q. B. 1. The receipt of the committee or any three of them is an effectual discharge, and the promoters are not concerned to see to the application of the purchase-money, which is distributable among the commoners according to their respective interests: *ib.* See also the Commonable Rights Compensation Act, 1882, as to the application of the money. Ss. 105, 106, and 107 provide the machinery where the compensation money cannot be agreed or a committee is not appointed (see *Re Gervis* [1902], 46 Sol. J. 336), but the parties may make other arrangements: *Bee* v. *Stafford and Uttoxeter Ry.* (1875), 23 W. R. 868.

Effect of erection of a new house where old house to which rights of common are appurtenant is pulled down.

Where rights of common are appurtenant to an old house which is pulled down and a new house is erected the rights remain, but no greater burden must be imposed on the lands affected by the rights: *A.-G.* v. *Reynolds* [1911], 2 K. B. 888; 80 L. J. K. B. 1073.

Foreshare and aftershare.

As to the meaning of "foreshare" and "aftershare" and the rights of the lord of the manor in the soil where such privileges exist, see 54 Sol. J. 175, 179, 194, 212; 55 Sol. J. 379—80.

Enfranchisement under L. P. Act, 1922.

Enfranchisement of copyholds under Pt. V. of the L. P. Act, 1922, does not extinguish commonable rights: 12th Sch., para. (4).

the said sum of £—— has been paid to them by the Company before the execution of these presents:

NOW, in exercise of the power for this purpose conferred by the said Act of 1845, this RELEASE WITNESSETH as follows:—

Receipt for compensation.

1. THE Committee as such Committee as aforesaid hereby acknowledge the receipt from the Company of the said sum of £——.

Extinction of commonable rights.

2. THE Committee hereby accept the said sum for and on behalf of themselves and all other persons having commonable and other rights over or in the land described in the Schedule hereto, as the full compensation payable for the extinction of all such commonable and other rights as aforesaid, and agree that all such commonable and other rights shall henceforth be extinguished.

IN WITNESS, &c

THE SCHEDULE.

No. XVIII.

AGREEMENT *for* SALE *to a* COUNTY COUNCIL *under a* SPECIAL ACT. (*Equitable Interest in Legal Estate.*)

THE —— COUNTY COUNCIL (——) ACT, 19—.

—— IMPROVEMENTS AT ——.

Parties.

AN AGREEMENT FOR SALE AND PURCHASE of the undermentioned property required for the purposes of the said Act made this —— day of ——, BETWEEN ——, of —— (hereinafter called the Vendor), of the one part, and the —— County Council (hereinafter called the Council), by ——, their valuer and agent, of the other part.

Interest sold.

1. THE estate and interest to be sold by the Vendor is the fee simple in possession [Leasehold for the residue of a term of —— years from the —— day of ——, 19—, at a rent of £—— per annum under a Lease dated, &c., and made between —— as lessor and —— as lessee], and is sold subject to the [Leases] [weekly tenancies] mentioned in the Schedule hereto.

Property.

2. THE property to be sold consists of ——, being No. —— on that part of the deposited plans and book of reference referred to in the said Act which relates to the Parish of ——, and being the property described in the Notice to Treat given by the Council under the said Act, and upon receipt of which notice the Vendor sent in a claim to the Council dated the ——

3. RENTS and profits and outgoings are to be received and paid by the Vendor to the day of completion of the purchase and by the Council from that day, and are to be apportioned if need be. Apportionment.

4. THE purchase-money agreed on is the sum of £—— (—— pounds), or (in the event of a valuation by surveyors under the Lands Clauses Consolidation Act, 1845),(*a*) proving necessary, such sum, not being less than the said sum of £——, as shall be determined by such valuation. [The said sum shall be accepted in discharge of all items of claim except —— .] Compensation money.

5. THE Council are (subject to the consent of the insurers) from the date of this Agreement to take all benefit to be derived by the Vendor under any existing policy of insurance against fire, they repaying to the Vendor all premiums hereafter to become due, and which at their request may be paid by the Vendor.(*b*) Fire insurance.

6. THE Council are to pay the Vendor's surveyor's costs amounting to £——, also the Vendor's costs of title and conveyance as allowed by the Lands Clauses Consolidation Act, 1845, under the provisions of which Act (but subject as hereinafter mentioned) this agreement is entered into and is to be carried out, and £—— for solicitor's preliminary costs. Costs.

7. THE purchase is to be completed at the office of the Council. Completion.

8. PROVIDED ALWAYS, that if the Vendor shall upon the investigation of his title appear to the satisfaction of the Council to be competent to make title, whether as being absolutely entitled or under a trust for sale or under the Settled Land Act, 1925, or as personal representative, or otherwise than under the Lands Clauses Consolidation Act, 1845, then the Council may in accordance with sub-section (7) of section forty-two of the Law of Property Act, 1925, require that title be made in such a way as may render unnecessary the payment of the purchase-money into court. Title to be made, if practicable, without payment into court.

[9. NOTHING herein contained shall prejudice the right of the Vendor to apply for the payment to him of part of the

(*a*) Where the council is purchasing as a local or public authority substitute the following (in the event of an assessment by the Official Arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919). This Act substitutes for the provisions of the Lands Clauses Act, 1845, a method of assessing compensation for sales under that Act when the purchaser is a local or public authority or a Government Department.

(*b*) See L. P. Act, 1925, s. 47 ; General Conditions of 1925, cl. 23.

compensation money under section seventy-three of the said Act of 1845,(*c*) or otherwise at the cost of the Council.]

AS WITNESS, &c.

THE SCHEDULE.

No. on Deposited Plan.	Date of Lease or Tenancy.	Short particulars of Property demised.	Name of present Lessee.	Term.	Yearly Rent reserved by Lease.	Rent apportioned on Property taken.

No. XIX.

AGREEMENT *for* SALE *of* LAND *to a* MUNICIPAL CORPORATION, *or an* URBAN DISTRICT COUNCIL, *purchasing under the* PUBLIC HEALTH ACT, 1875, *or other* STATUTORY AUTHORITY.(*a*) (*Equitable Interest in Legal Estate.*)

Parties.

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the Mayor, Aldermen and Burgesses of ——, in the County

(*c*) See *Re Scott's Settlement*, Reg. Lib., 1899, S. No. 530.

Power for local authority to purchase land.

(*a*) The P. H. Act, 1875, s. 175, enables local authorities to purchase lands for various purposes authorised by the Act. S. 176 incorporates the L. Clauses Act, 1845, except s. 127, subject to a provision that before putting in force any of the powers with respect to the purchase and taking of land otherwise than by agreement, the local authority must apply for and obtain a provisional order of Ministry of Health (see Local Government Acts, 1888 and 1894, and Ministry of Health Act, 1919, s. 3) empowering them so to do, which order must be confirmed by Parliament: s. 297. The P. H. Act, 1907, s. 95, extends the powers of ss. 175 and 176 to highways. The Metropolitan Paving Act, 1817, conferred compulsory powers of street widening (see *Green* v. *Hackney Corpn.* [1910], 2 Ch. 105; 80 L. J. Ch. 16; *Davies* v. *London Corpn.* [1913]. 1 Ch. 415; 82 L. J. Ch. 286; *Beyfus* v. *Westminster Corpn.*, 84 L. J. Ch. 838), where it was held that the whole of the premises must be taken if the taking of part would cause substantial injury to the premises as actually enjoyed.

Superfluous land to be sold, unless Ministry directs otherwise.

Section 175 of the Act of 1875 provides that any lands acquired by a local authority under the powers of the Act and not required for the purpose for which they were acquired shall be sold unless the Ministry otherwise direct. It has been held that the latter words do not enable the Ministry to make an order directing that land taken compulsorily for a particular purpose shall be used permanently for a different purpose authorised by the Act but objected to by the vendor: *A.-G.* v. *Hanwell U. D. C.* [1900], 2 Ch. 377; 69 L. J. Ch. 626; followed in *A.-G.* v. *Pontypridd U. D. C.* [1906], 2 Ch. 257; 75 L. J. Ch. 578; but by the Public Health Act, 1907, s. 95, land not required for the purposes for which it was acquired may be appropriated to any purpose approved by the Ministry of Health, subject to any special covenant or condition or the provision of any local Act of Parliament affecting the use of such land. Land thus appropriated may not be used for the construction of anything which would cause a nuisance, or for wells for the public supply of water, or a cemetery, burial ground, destructor, electricity generating

of ——, acting by the Council of the said Borough as the Urban Sanitary Authority (hereinafter called the Corporation) [*or* the Urban District Council for ——, in the County of —— (hereinafter called the Council)], by —— their agent, of the other part.

WHEREBY IT IS AGREED as follows :—

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station, sewage farm, or hospital for infectious diseases, unless authorised to do so by the Ministry of Health. With regard to the erection of an electric generating station, see Electricity Supply Act, 1919, s. 11. The functions of the Local Government Board have been transferred to the Ministry of Health: Ministry of Health Act, 1919, s. 3.

The Education Act, 1921, s. 114, enables the local education authority to appropriate land with the sanction of the Board of Education and the approval of the Ministry of Health, for other than educational purposes. If, however, upon a sale to a local authority by agreement the conveyance expressly provides that any land not required for the original purpose may, with the sanction of the Minister or the Board, be used for any other authorised purpose, there seems no reason why such a provision should be held ineffective. The vendor would be bound by his contract, and as regards the ratepayers, their interests are sufficiently safeguarded by the public inquiry always held in these cases. So, also, where there is no such express provision in the conveyance, it is conceived that the order might be made with the vendor's consent. The transaction in that case would be in effect, first, a re-sale by the local authority to the vendor; and, secondly, a re-purchase by the local authority at the same price for the altered purpose.

Whether surplus land may with sanction of Ministry be used for a different purpose.

A local authority purchasing under statutory powers may covenant not to use the property for purposes other than those for which it was originally purchased: *Stourcliffe, &c., Co.* v. *Bournemouth Corpn.* [1910], 2 Ch. 12; 79 L. J. Ch. 455. Where part only of the land acquired is immediately, but the rest will ultimately be, required for the purpose for which it was taken, the local authority may in the meantime use it for some other lawful purpose, *e.g.*, a recreation ground: *A.-G.* v. *Teddington U. D. C.* [1898], 1 Ch. 66; 67 L. J. Ch. 23; *A.-G.* v. *Pontypridd U. D. C., supra.*

Land not wanted at once may be used temporarily for other purposes.

Among other purposes for which a local authority may purchase land under the P. H. Acts is that of providing a cemetery, except in the Administrative County of London (P. H. (Interments) Act, 1879, which incorporates the Cemeteries Clauses Act, 1847); crematoria under the Cremation Act, 1902; open spaces under the Open Spaces Act, 1906; and museums and gymnasiums under the Museums and Gymnasiums Act, 1891. Burial grounds are also provided for under the Burial Acts: see next Precedent. The Public Health Act, 1908, s. 1, extends the powers of district councils under the Act of 1875 to rural district councils. Under the Education Act, 1921, ss. 109—117, local education authorities may purchase land compulsorily, for the purpose of any of their powers or duties under the Education Acts, when authorised by an order confirmed by the Board of Education. They may acquire land by agreement without any order. For the purpose of this Act the provisions of the Lands Clauses Act apply. S. 114 provides that land purchased by an education authority but appropriated to other purposes shall not be used for the purposes of a hospital for infectious diseases or any of the purposes contained in s. 95 of the Public Health Act, 1907, without the consent of all persons interested or the authority of the Ministry of Health.

Cemeteries.

Agreement to sell and purchase.

1. THE Vendor shall sell, and the Corporation [*or* the Council] shall purchase, for the purposes authorised by section — of the Public Health Act, 1875 [*or* by (*state other statutory authority*)]

ALL THAT piece of land situated in the Parish of ——, in the County of ——, containing —— or thereabouts, which is delineated on the plan annexed hereto, and thereon coloured ——. and the inheritance thereof in fee simple in possession, free from incumbrances, at the price of £——, subject to the conditions hereinafter mentioned.

Purchase to be conditional on sanction of Ministry being obtained.

2. THE purchase is conditional on the Corporation [*or* Council] obtaining the sanction of the Ministry of Health to the raising of the purchase-money by loan under the provisions of the said Act, and the Corporation [Council] shall forthwith apply to the Ministry for such sanction.

Time for delivery of abstract,

and for sending in requisitions.

3. WITHIN fourteen days after the date of the Order of the Ministry sanctioning the loan, the Vendor shall deliver to the Corporation [*or* Council], or their solicitor, an abstract of his title to the premises, commencing with ——. [AND within fourteen days from the delivery of the abstract the Corporation [*or* Council] shall make and send to Messrs. ——, the Vendor's solicitors, their objections and requisitions (if any) in respect of the title or the abstract, and all objections and requisitions not sent within that time shall be deemed to be waived.(*b*)]

Time for completion of purchase.

4. THE purchase shall be completed at the expiration of —— weeks from the date of such Order as aforesaid, and possession shall then be delivered, and a proper conveyance made to the Corporation [*or* Council]. If from any cause the purchase shall not be completed at the time aforesaid, the Corporation [*or* Council] shall thenceforth pay to the Vendor interest on the purchase-money at the rate of £5 per cent. per annum until the actual completion of the purchase.

Interest if not completed at appointed time.

Agreement to be void if sanction not obtained within six months.

5. IF an order of the Ministry sanctioning the said loan shall not be made within —— months from the date hereof, or within such further time as the parties hereto may agree in writing, then and in such case either party may, by notice in writing to the other party, rescind this agreement.

Costs to be paid by District Council.

6. THE Corporation [*or* Council] shall pay all such costs, charges, and expenses as by section eighty-two of the Lands Clauses Consolidation Act, 1845, are directed to be borne by the promoters of the undertaking, and shall also pay the Vendor's

(*b*) This clause within square brackets will be omitted if the purchasers have compulsory powers.

costs and expenses incurred in or about the preparation and execution of this agreement, whether the same is carried into effect or is rescinded under the last preceding clause.

AS WITNESS, &c.(*c*)

No. XX.

AGREEMENT *for* SALE *of* LAND *to a* BURIAL BOARD *for a* CEMETERY.(*a*) (*Equitable Interest in Legal Estate.*)

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the Burial Board for the Parish of ——, in the County of —— (hereinafter called the Burial Board) by —— their agent of the other part. Parties.

(*c*) As to the power for corporate bodies to enter into agreements by their agents, see L. P. Act, 1925, s. 74.

(*a*) The Burial Act, 1852, s. 26 (extended by the Act of 1853), enables a burial board, with the approval of the vestry, to contract for the purchase of land for forming a cemetery or for making additions to a cemetery. And s. 20 of the same Act enables the board, with the sanction of the vestry and the approval of the Treasury (now the Ministry of Health: see Local Authorities (Treasury Powers) Act, 1906; M. of H. Act, 1919, s. 3), to borrow any money required for providing or laying out a cemetery, and building a chapel thereon, and to charge the future rates of the parish with the money so borrowed, and the Burial Act, 1857, ss. 19—21, contains provisions as to loans. In rural parishes the parish meeting may adopt the Burial Acts, and will in that case be substituted for the vestry (L. G. Act, 1894, s. 7); an urban district may by resolution vest in themselves the powers of a burial board (*ib.*, s. 62); so may a borough council: *Kirkdale Burial Board* v. *Liverpool Corpn.* [1904], 1 Ch. 829; 73 L. J. Ch. 529. Under the Parochial Church Councils (Powers) Measure, 1921, ss. 4 and 5, all the powers of the vestry, with some exceptions which do not apply here, have been transferred to the parochial church council. The parochial church council have complete control of parochial finance, and alone have power to strike a voluntary rate; all power of acquiring land is now vested in the council, subject to the approval of the Diocesan Authority, and this land must in future be vested in the Diocesan Authority. Although no reference is made to burial boards, it is conceived that in future they will be a sub-committee appointed by the Parochial Church Council and that the land acquired by them will be vested in the Diocesan Authority in trust for the Parochial Church Council. If, at the time when the land is first appropriated for the cemetery, there is any completed dwelling-house within a distance of 100 yards from any part of the land, that part cannot be used for burials without the consent in writing of the owner, lessee, and occupier of the house: Burial Act, 1855, s. 9, as amended by the Burial Act, 1906, s. 1; see *Clegg* v. *Metcalfe* [1914], 1 Ch. 808; 83 L. J. Ch. 743. Provisions of Burial Acts. Parochial Church Councils.

The Public Health (Interments) Act, 1879, enables local authorities to provide cemeteries and acquire land for that purpose. The Burial Acts (except the Acts of 1900 and 1906) do not apply to cemeteries provided under the Public Health Acts. No part of a cemetery provided under these Acts can be constructed within 100 yards of a dwelling-house without the consent of the owner, lessee, and occupier: Cemeteries Clauses Act, 1847, s. 10; Burial Act, 1906, s. 2.

WHEREBY IT IS AGREED as follows :—

Agreement to sell.

1. THE Vendor shall sell, and the Burial Board, under the powers of the Burial Acts, 1852 to 1906, shall purchase :

ALL THAT, &c., and the inheritance thereof in fee simple in possession free from incumbrances, at the price of £——, subject to the conditions hereinafter contained.

Purchase conditional on obtaining necessary consents.

2. THE purchase is conditional on the Burial Board obtaining the approval of the parochial church council of the said parish and of the Diocesan Authority [and of the Minister of Health (*b*)] to the said purchase, and the sanction of the said council [and the approval of the Minister] to the raising of the purchase-money by loan, and the Burial Board shall forthwith take the proper steps to obtain such approvals and sanction as aforesaid.

Vendor to show title.

3. THE Vendor shall, on receiving notice from the Burial Board that the necessary sanction and approvals have been obtained, deliver to the Burial Board, or to their solicitor or clerk, an abstract of the Vendor's title to the land hereby agreed to be sold.

Requisitions and interest.

4. THE General Conditions of 1925 respecting requisitions and replies to answers and payment of interest shall apply to this agreement.(*c*)

Time for completion.

5. THE purchase shall be completed on the —— day of ——, 19—, if the necessary sanction and approvals shall have been obtained as aforesaid, and the possession of the land shall then be delivered to the Burial Board and a proper conveyance made to the Diocesan Authority.

Power to either party to rescind agreement if not approved within certain time.

6. IF the necessary sanction and approvals are not obtained within —— months from the date hereof, or within such extended time as the parties may agree in writing, then and in such case either party may by notice in writing to the other party rescind this agreement.

Costs.

7. The Burial Board shall pay, &c. (*as in last clause of last Precedent*).

AS WITNESS, &C.

Local authorities within the administrative County of London may not become proprietors of burial grounds, but companies incorporated under a special Act of Parliament may do so. The special Act will incorporate the provisions of the Cemeteries Clauses Act, 1847, except in so far as it expressly varies them.

(*b*) The consent of the Ministry of Health (substituted by the Act of 1900 for the Home Office) is required if the burial ground is within two miles of the metropolis : Act of 1852, s. 9.

(*c*) This assumes that the solicitors acting for the parties have power to use the General Conditions of 1925.

No. XXI.

AGREEMENT *for* BUILDING GRANT *in fee in consideration of a* PERPETUAL RENTCHARGE:(*a*) (*Equitable Interest in Legal Estate.*)

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part. Parties.

WHEREBY IT IS AGREED as follows :—

1. So soon as the architect or surveyor for the time being of the Vendor (hereinafter called the Architect) shall have given his written certificate that the dwelling-houses hereinafter agreed to be built are completed and made fit for habitation to his satisfaction, the Vendor shall convey to the Purchaser : Upon architect's certificate that buildings are complete, Vendor to execute conveyance, reserving a perpetual rent.

ALL THAT, &c. (*parcels*), reserving to the Vendor (in accordance with section sixty-five of the Law of Property Act, 1925) out of the property. ONE perpetual yearly rentcharge of £——, to commence from the —— day of —— and to accrue from day to day, and to be issuing out of and charged upon the said land and to be payable half-yearly on the —— day of ——, and the —— day of —— in every year, the first half-yearly payment to be made on the —— day of —— Together with the statutory and other powers for enforcing and compelling payment thereof.(*b*)

2. THE Purchaser may, immediately after the execution of this agreement, enter upon the said land and erect the buildings, and otherwise proceed with the works mentioned in this Agreement. Purchaser may enter and proceed with works.

3. THE Purchaser shall, within one month after obtaining possession of the said land, fence in the same with good and substantial stone walls [fences of ——-] on all the sides thereof ; and shall, before the —— day of ——, 19—, at his expense and to the satisfaction of the Architect, build, cover in, and completely finish fit for habitation upon such part of the said Purchaser to fence in plot, and complete houses.

(*a*) See notes generally to Prec. XII, p. 421, *supra ;* a tenant for life may sell in consideration of the reservation of a rentcharge (S. L. Act, 1925, s. 29 (2)) ; so may trustees for sale (L. P. Act, 1925, s. 28) ; and personal representatives : Ad. of E. Act, 1925, s. 39. In these cases the conveyance must contain a covenant to pay the rent, a power to re-enter if the rent is not paid within 30 days and must be executed in duplicate : S. L. Act, 1925, s. 39 (4). It is a question whether the power to re-enter must be an absolute power to dispossess the owner of the land. By fiduciary owners.

(*b*) For the statutory powers and remedies, see L. P. Act, 1925, s. 121.

land as is marked out for that purpose on the plan hereto, with good freestone [bricks and rough-cast] and all proper materials of all sorts, and in a good, substantial, and workmanlike manner—(*give the number*) semi-detached villas or dwelling-houses, whether or not for use as flats, with proper offices and outbuildings, according to plans and elevations to be prepared by the Architect, and under his inspection.

Division-fences to be party-walls.

4. EVERY division or boundary fence separating the said land from the adjoining plot or plots, shall (when made) be a party-wall or fence, severed vertically in accordance with section thirty eight of the Law of Property Act, 1925,(*c*) and a proper proportion of the expense thereof shall be repaid by the grantees of the adjoining plot or plots, such proportion to be settled by the Architect.

Purchaser to make drains.

5. THE Purchaser shall make all proper drains and sewers in such manner as the local authority shall require and as shall be approved by the Architect.

As to flues.

6. NO flue or substitute for a flue shall be made in the said dwelling-houses, or in any office or building belonging thereto, except such as shall be carried into the chimney-stacks of the said dwelling-houses.

Materials.

7. ALL stone, bricks, rough-cast, timber and other materials, which shall have been brought upon the premises by the Purchaser for the purpose of erecting such buildings as aforesaid, shall be considered as immediately attached to and belonging to the premises, and shall not be removed without the consent in writing of the Vendor or his agent.(*d*)

If Purchaser make default in building, &c., Vendor may re-enter and sell.

8. IF the Purchaser shall at any time discontinue the works on the said land for one month, or shall not complete the said dwelling-houses before the said —— day of ——, 19—, pursuant to the provisions hereof, then the Vendor or his agent may re-enter upon the said land and take possession thereof, and of all buildings and materials whatsoever which may be thereon, and determine this agreement.

Party walls.

(*c*) See as to party structures existing on 1st January, 1926, L. P. Act, 1925, 1st Sch., Pt. V; and as to party walls, see Norton on Deeds, p. 240; as to regulations respecting party walls in London, see London Building Act, 1894, s. 5 (16), (18; *London &c. Dairy Co.* v. *Morely* [1911], 2 K. B. 257; 80 L. J., K. B. 1361; settled on appeal 1911, 2 K. B. 1143; 80 L. J., K. B. 1361; *Selby* v. *Whitbread* [1917], 1 K. B. 736; 86 L. J. K. B. 974; see also *Irving* v. *Turnbull* [1900], 2 Q. B. 129; 69 L. J. Q. B. 593; *cf.* 54 S. L. 423.

(*d*) This clause does not render it necessary to register the agreement as a bill of sale: *Brown* v. *Bateman* (1867), L. R. 2 C. P. 272; 36 L. J. C. P. 134; *Reeves* v. *Barlow* (1884), 12 Q. B. D. 436; 53 L. J. Q. B. 192.

Purchaser to accept conveyance.

9. As soon as the Architect (*e*) shall have given his written certificate that the dwelling-houses agreed to be built are completed and made fit for habitation to his satisfaction, the Purchaser shall accept a conveyance of the said land and the buildings erected thereon upon the terms hereof, and shall execute a duplicate or counterpart of the conveyance.

[If the Purchaser so requires arrangements shall be made at his expense for the execution of separate conveyances of each house at an apportioned rentcharge and so that every such apportionment shall be fixed by the Architect.]

Conveyance to contain covenants by grantee to pay rent.

10. THE conveyance shall contain the following covenants by the Purchaser (*f*) (that is to say) :—

(1) To pay the yearly rentcharge ;

To repair.

(2) To repair and keep the said dwelling-houses and buildings, and the boundary walls and drains belonging thereto, in good and tenantable repair and condition ;

To permit Vendor to view.

(3) To permit the Vendor, and the persons deriving title under him, and all persons authorised by him or them once in every year in the daytime, on giving to the tenants or occupiers for the time being of the said dwelling-houses respectively at least one week's notice of his or their intention so to do, to enter the said dwelling-houses, buildings, and premises respectively and examine the condition thereof ;

To insure.

(4) At all times to insure and keep insured against loss or damage by fire the said dwelling-houses and buildings in the —— Office, or some other public insurance office, in the sum of £—— at least [for each house], and on demand to produce to the Vendor, or the persons deriving title under him, the policy or policies of insurance, and the receipt for the premium for the current year payable in respect thereof, and, whenever any loss or damage by fire shall happen to the said dwelling-houses and buildings, or any part thereof, forthwith to expend the money received under such insurance as aforesaid, and also such other money as shall be necessary for the purpose, in rebuilding or reinstating the premises.(*g*)

(*e*) As to costs of architect, see *Reading Indus. Co-op. Society* v. *Palmer* [1912], 2 Ch. 42 ; 81 L. J. Ch. 454.

Covenants running with the land.

(*f*) There is no longer any need for a covenantor to be expressed to covenant for his assigns (L. P. Act, 1925, s. 79) ; " land " includes a rentcharge, and the benefit of the covenants will run therewith : *ib.*, s. 78 ; see also as to covenants running with the land (*ib.*, s. 80) ; and as to modification of restrictive covenants : *ib.*, s. 84.

Fire insurance.

(*g*) Fires Prevention (Metropolis) Act, 1774, s. 83 ; *Westminster Fire Office*

Not to alter elevation.

(5) Not to alter or permit to be altered the external plan or elevation of the said dwelling-houses and buildings, respectively without the previous consent of the Vendor, or the persons deriving title under him.(*h*)

Not to carry on any trade or use premises except as private dwelling-houses, without Vendor's consent.

(6) Not at any time without such consent as aforesaid to carry on or permit to be carried on upon the premises any trade or business whatsoever, or to use or permit to be used the same for any other purpose than as private dwelling-houses or flats or as the professional residence of a doctor, surgeon, solicitor, or surveyor.

Not to erect other buildings without Vendor's consent.

(7) Not without such consent to erect on the said land any messuage or building other than the dwelling-houses and buildings to be erected as aforesaid, except a stable or coach-house or motor shed or greenhouses or conservatories in connection with the said dwelling-houses respectively.

Conveyance to contain powers for securing performance of covenants as to repairs, &c.

11. [— (1)] THE conveyance shall also contain a proviso that if—

(a) any dwelling-house or buildings shall be destroyed or damaged by fire ;

(b) shall fall into disrepair, and the Purchaser, or the persons deriving title under him, shall fail to rebuild or repair the same within three months after a notice requiring him or them so to do shall have been given to him or them or left at or upon the premises,

then and so often as the same shall happen, and notwithstanding the waiver of any previous default, the Vendor, or the persons deriving title under him, owner or owners for the time being of the said rentcharge, may at any time,(*i*) enter into and upon the premises, and execute and do such works, acts, and things as shall be necessary or proper for rebuilding or repairing the same, as the case may require, and may remain upon the premises and receive the rents and profits thereof, until all money expended in such rebuilding or repairs, and all costs and

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v. *Glasgow, &c., Socy.* (1888), 13 A. C. 669; also 54 S. J. 357. The provisions of this Act are of general as opposed to local application: *Sinnott* v. *Bowden* [1912], 2 Ch. 414 ; 81 L. J. Ch. 832. As to application of insurance money by a mortgagor, see L. P. Act, 1925, s. 108 (3), (4) ; or by trustees, see S. L. Act, 1925, s. 81 ; T. Act, 1925, ss. 19 and 20.

(*h*) As to costs of vendor's architect, see *Reading Indus. Co-op. Socy.* v. *Palmer* [1912], 2 Ch. 42 ; 81 L. J. Ch. 454.

Perpetuities.

(*i*) A legal power of re-entry may be annexed to a legal rentcharge and made exercisable at any time without regard to the perpetuity rule: L. P. Act, 1925, s. 1 (2) (*e*).

expenses incurred in or about the exercise of such power, shall thereby or otherwise be fully paid and satisfied.

[*If the land is being conveyed by a tenant for life, trustee for sale or personal representative add as a sub-section.*

(2) The said conveyance shall also contain a condition of re-entry on the said rentcharge not being paid within thirty days so as to comply with sub-section 4 of section thirty-nine of the Settled Land Act, 1925.]

12. THE conveyance, and the counterpart thereof, shall be prepared by the Vendor's solicitors, at the cost of the Purchaser.(*j*) Conveyance, by whom and at whose cost to be prepared.

13. THE Purchaser having examined the Vendor's title, and being satisfied therewith, shall accept the same.(*k*) Vendor's title accepted.

14. ALL documents of title relating to the property shall be retained by the Vendor, who shall in the conveyance give to the Purchaser a statutory acknowledgment of his right to production and delivery of copies thereof [and also an undertaking for the safe custody thereof.(*l*)] Documents.

AS WITNESS, &c.

No. XXII.

AGREEMENT *for* SALE *of* REVERSION *in* PERSONAL PROPERTY.(*a*)

AN AGREEMENT made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the X. Company, whose registered office is at —— (hereinafter called the Company), by ——, their agent, of the other part. Parties.

(*j*) This is one of the cases where a vendor may still stipulate that the conveyance is in the first instance to be prepared by his solicitor: L. P. Act, 1925, s. 48 (1).

(*k*) If the title has not been accepted, then the General Conditions of 1925 can be employed with the additions in the text which will then be inserted in the Special Conditions. As to conditions of sale which a vendor cannot impose, see L. P. Act, 1925, s. 42.

(*l*) Apart from express provision it seems that the purchaser would be entitled to the documents: *Whitfield* v. *Faussett* (1749), 1 Ves. Sen. at p. 394. If the vendor is a trustee or mortgagee he will not give an undertaking for safe custody.

(*a*) See notes to Prec. IV of General Conditions, p. 387, *supra*. As to notices to be given as respects equitable interests in land (which include the proceeds of sale of land held on trust for sale: L. P. Act, 1925, s. 205 (1) (x)), capital money for the purposes of the S. L. Act, 1925, or investments representing capital money, see L. P. Act, 1925, s. 137; in the case of proceeds of sale notice must be given to the trustees for sale, in the case of capital money to the trustees of the settlement: *ib.*, sub-s. 2. All notices of Notices.

WHEREBY IT IS AGREED as follows :—

Agreement to sell.

1. THE Vendor shall sell, and the Company shall purchase at the price of £—— the reversion described in the schedule hereto, free from all death duties, and from all other incumbrances.

Completion.

2. THE purchase shall be completed and the purchase-money (*b*) paid at the aforesaid office of the Company [at the office of Messrs. ——, the Vendor's solicitors] on the —— day of ——, and if from any cause whatever (other than wilful default on the part of the Vendor) the completion of the purchase is delayed after the last-mentioned day, the purchase money shall bear interest at the rate of £— per cent. per annum from that day to the day of the actual payment thereof.

Delivery of abstracts and copies.

3. THE Vendor shall within seven days after the date hereof deliver to the Company a full copy of the instrument under which the said reversion arises, and an abstract of the rest of his title to the said reversion (including any appointments of new trustees of the said instrument) [and as regards any fund in Court comprised in the reversion, a copy of the pay-office certificates of such fund].

Requisitions.

4. CLAUSES 9 to 11 (relating to requisitions and power to rescind) of the General Conditions of 1925 shall apply to this agreement in like manner as if it were a contract for the sale of land.

Evidence of birth, marriage, identity, &c., of tenant for life and Vendor.

5. THE Vendor shall, before the date fixed for completion, at his own expense furnish the Company with evidence of the age of the tenant for life mentioned in the Schedule hereto, such evidence to include the birth or baptismal certificate of such tenant for life, and any necessary evidence of identity by statutory declaration, or otherwise as may be required, and of the age, pedigree, and identity of the Vendor, such evidence to include a birth or baptismal certificate [marriage certificate] and

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dealings with equitable interests in real or personal property must be in writing : *ib.*, sub-s. 3. For cases where a memorandum may be endorsed when a valid notice cannot be served : *ib.*, sub-ss. 4-6. As to the production of the notice and documents and furnishing information : *ib.*, sub-ss. 8 and 9. But if a trust corporation has been appointed to receive notices, then they must be given to that corporation : s. 138. In the case of equitable or minor interests in registered land, notices of dealings therewith must be given to the Registrar, who will keep an index of such notices : L. R. Act, 1925, s. 102 (2) ; L. R. R., 1925, rr. 11, 229.

Vendor's title.

(*b*) The doctrine of vendor's lien for unpaid purchase-money extends to personal estate : *Re Stucley* [1906], 1 Ch. 67 ; 75 L. J. Ch. 58 ; and see *Poulton* v. *Anglo-American Oil Co.* [1911], 27 T. L. R. 216.

statutory declaration, or such other evidence of identity as may be reasonably required.(*c*)

Production of documents.

6. THE Vendor shall cause all documents of title in the possession of himself or his incumbrancers to be produced to the Company free of expense to them.

Provision in case of death of tenant for life before completion.

7. THE Company shall be entitled to all advantages of the said reversion from the date of this Agreement, and if the said tenant for life, shall die before the completion of the purchase, the income of the funds and property mentioned in the Schedule hereto shall belong to the Company as from such death.

Evidence as to position of funds and as to incumbrances and notices.

8. THE Vendor shall at his own expense furnish to the Company, if required by them, before the completion of the purchase—

(a) A statement signed by the trustees for the time being of the instrument under which the said reversion arises, stating that they hold the investments or property mentioned in the Schedule hereto, upon the trusts of the said instruments, together with a letter signed by one of such trustees authorising the Company to obtain information from the proper offices as to whether the said investments are standing in the names of the said trustees, and what distringas notices (if any) affect the same; and

(b) A statement signed by the trustees of the aforesaid instrument, and also by any trustees of any derivative interest in the said investments or property affecting the Vendor's title, stating what notices the said trustees respectively have received of assignments, settlements, incumbrances, or other dealings affecting the said reversion.(*d*)

Production of securities held by trustees.

9. THE Vendor shall also cause the said trustees of the aforesaid instrument to produce to the Company, free of expense to them, any securities or deeds relating to the said investments and property hold by them.

Matters of pedigree.

(*c*) On sale of legal estate in land, matters of pedigree will seldom, if ever, affect the title, but they are material when dealing with equitable interests. As to the admissibility of non-parochial registers as evidence of birth, see *Re Woodward* [1913], 1 Ch. 392; 82 L. J. Ch. 230.

(*d*) A trustee need not give any information to strangers concerning his trust (*Low* v. *Bouverie* [1891], 3 Ch. 82; 60 L. J. Ch. 594; *Porter* v. *Moore* [1904], 2 Ch. 367; 73 L. J. Ch. 729); but information must be given to beneficiaries: L. P. Act, 1925, s. 137 (9).

Power for Company to rescind on default by Vendor.

10. If the Vendor shall fail or be unable to comply with the terms of the two preceding clauses, the Company may, by notice in writing delivered to the Vendor or to his solicitors, rescind this Agreement, and thereupon the Vendor shall pay to the Company their expense of investigating the Vendor's title or otherwise incurred in connexion with this Agreement as may be agreed or in default of agreement as taxed as between solicitor and client.

Vendor to commute duties.

11. (*Insert a clause corresponding to clause* 3 *of Precedent* X, *p.* 419, *sup.*)

[Power for Company where fund is in court to obtain stop order.]

[12. As regards any fund in court comprised in the reversion, the conveyance to the Company shall contain a clause empowering them and their assigns at their own expense to apply for and obtain a proper stop order that no part of such fund shall be sold, transferred, or dealt with without notice to the Company or their assigns, and upon such application to use the name of the Vendor as concurring in or consenting to the same.]

As witness, &c.

The Schedule.

The —— reversion of the Vendor under the Will of ——, who died on the —— day of —— [*or*, under a Settlement dated the —— day of ——, 19—], expectant on the death of ——, the tenant for life who was born on the —— day of ——, in one —— share of the following investments and property now standing in the names of or held by X. and Y., the present trustees of the above-mentioned Will [*or* Settlement], or the investments and property for the time being representing the same, namely :—

(*State particulars of investments and property.*)

No. XXIII.

AGREEMENT *for* Sale *of* Policies of Assurance (*a*)

Parties.

AN AGREEMENT made the —— day of ——, Between A. B., of, &c. (hereinafter called the Vendor), of the one part, and the X. Company, whose registered office is at —— (hereinafter called the Company) by ——, their agent, of the other part.

(*a*) See Goodeve, Personal Property, 5th ed., 146, *et seq.*, as to the law relating to life assurance policies. Notice in duplicate of the assignment must be given to each office.

As to power for corporations to appoint agents to execute, see L. P. Act, 1925, s. 74 (2).

WHEREBY IT IS AGREED as follows :—

1. THE Vendor shall sell, and the Company shall purchase, at the price of £——, Agreement for sale.

ALL those —— policies of assurance mentioned in the Schedule hereto, and all money to become payable thereunder, whether by way of bonus or otherwise, and the full benefit thereof free from incumbrances.

2. (*Completion as in last Precedent, clause* 2.)

3. THE Vendor shall within seven days after the date hereof deliver to the Company— Copies of policies and abstract of title.

(a) full copies of the said policies, together with the conditions indorsed thereon or incorporated therewith,

(b) a complete abstract of his title to the said policies.

4. CLAUSES 9 to 11 of the General Conditions of 1925 (relating to requisitions and power to rescind) shall apply to this agreement in like manner as if it were a contract for the sale of land. Requisitions.

5. THE Vendor shall before the date fixed for the completion of the purchase, at his own expense, furnish the Company with proper evidence of the age of the life assured by each of the said policies (including a certificate of birth or baptism, and any necessary evidence of identity by statutory declaration, marriage certificate, or otherwise, as may be required) [and the Vendor will also procure the age of the assured to be admitted on each of the said policies if not already so admitted]. Evidence of age of assured and of identity.

6. THE said policies are warranted by the Vendor, and are sold as being in the hands of assignees for value— Policies to be warranted, indisputable, world-wide, and free from certain restrictions.

(a) indisputable except on the ground of fraud,

(b) world-wide,

(c) free from all restrictions as to the occupation of the person whose life is assured,

(d) free from liability to forfeiture in the event of the death of the person whose life is assured by suicide, duelling, or at the hands of justice.

[If by virtue of the conditions of any policy the same is in any respect not as warranted, the Vendor shall, before the date hereinbefore fixed for completion, procure the effectual removal or waiver of such conditions.]

7. THE Vendor shall cause each of the insurance offices with whom the said policies are effected to furnish to the Company, immediately before the completion of the purchase, a statement Notices of incumbrances.

of what notices (if any) such office has received of assignments, incumbrances, and other dealings with the policy or policies in that office.

Power for Company to rescind on default of Vendor.

8. IF the Vendor shall fail or be unable to comply with the terms of the last three clauses, the Company may, by notice in writing delivered to the Vendor or to his solicitors, rescind this agreement so far as regards the purchase of the said policies, and thereupon the Vendor shall pay to the Company their expenses of investigating the Vendor's title or otherwise incurred in connexion with this agreement as may be agreed or in default of agreement as taxed as between solicitor and client.

Production of documents of title.

9. THE Vendor shall cause all documents of title in the possession of himself or his incumbrancers to be produced to the Company free of expense to them.

Provision in case of death of assured before completion.

10. THE Company shall be entitled to all advantages of each of the said policies from the date of this agreement; and if any of the said policies shall become payable before the completion of the purchase, the full benefit of such policy shall belong to the Company.

Covenants for title.

11. IN the assignment to the Company the Vendor shall be expressed to assign as beneficial owner [and the assignment shall contain a covenant by the Vendor from time to time to give to the Company or their assigns at least ten days' notice in writing of any intended change of abode, and that his personal representatives will, within twenty-one days after his death, send information thereof to the Company or their assigns by prepaid letter sent through the post, addressed in the case of the Company to them at their chief office in England for the time being].(*b*)

AS WITNESS, &c.

THE SCHEDULE.

Date of Policy.	No. of Policy.	Name of Assurance Company.	Name of Person whose Life is Assured.	Amount of Bonuses up to date of this Agreement.	Amount Assured exclusive of Bonuses.	Premiums and when Payable.
1.						
2.						
3.						

(*b*) The latter part of this clause will not be used unless the vendor is selling a policy on his own life.

DIVISION II.

CONVEYANCES ON SALE.(a)

PART I.

FORMS IN CONVEYANCES ON SALE.

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(a) In these Forms it is assumed that the parties to the conveyance have previously been defined as "the Vendor," "the Purchaser," "the Borrower," "the Mortgagee," "the Trustees," &c., as provided in the Precedents, Part II, *inf.*

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Section I.

Recitals.(*a*) *It is assumed that* "WHEREAS—" *will be placed at the head of the recitals, which will be numbered.*(*b*)

No. 1.

Seisin of Vendor [variations where there are Leases affecting the property] and agreement for sale.

THE Vendor is seised in fee simple in possession free from incumbrances [subject to and with the benefit of the Leases mentioned in the —— Schedule hereto] of the property hereinafter described and has agreed to sell the same to the Purchaser[s] for the like estate in possession free from incumbrances at the price of £——.

No. 2.

Mortgage of freeholds where the Mortgagees concur with the owner in selling; agreement for sale. Variations where only part of the mortgaged property is sold.

(1) By a Mortgage dated the ——, and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor, being then seised in fee simple in possession free from incumbrances of the property hereinafter described, conveyed that property [with other property (*c*)] unto the Mortgagees in fee simple (*d*) by way of mortgage for securing

(*a*) In the case of registered land recitals will seldom be required, as almost all purchase deeds of registered land will be in the prescribed form of transfer, to be completed by registration, which does not (as a rule) require them. Recitals in these cases should accordingly be avoided unless the instrument would be unintelligible or misleading without them. The following forms will apply (where needed) subject to small verbal modifications. In no case may an instrument (*e.g.*, a charge) which will be referred to on the register recite an unregistered document—except a document relating to an overriding interest or an estate or interest excluded from the effect of registration under a possessory or qualified title. Under L. R. R., 1925, rr. 74, 75 and 78, the registrar has considerable powers of control over the forms of instruments, and, in cases of doubt, the draft should be submitted to him for approval before execution.

Description of indentures and deeds; construction.

(*b*) The expression "indenture" has been out of date since 1845, see L. P. Act, 1925, s. 56 (2); in this edition advantage is taken of s. 57 to describe deeds according to the nature of the transaction thereby effected; and, pursuant to s. 61, to use the expression "month" as meaning calendar month, "person" as including "corporation" and to make allowance, as has long been done in Acts of Parliament under the Interp. Act, 1889, for the fact that the singular includes the plural, the masculine includes the feminine and *vice versa*. It was necessary to define "hereditaments" in the L. P. Act, 1925, see s. 205 (1) (ix), but having regard to the Ad. of E. Act, 1925, that expression has, without the aid of a definition, become misleading, hence in this edition "property" or "land" has been substituted therefor.

"Hereditaments."

(*c*) The words in square brackets will be used where the mortgage comprised other property not included in the sale.

Recitals of mortgages.

(*d*) If the mortgage is dated before 1882, for "in fee simple" substitute "and their heirs." If the mortgage is made after 1925 then recite the charge by way of legal mortgage. It is useless after 1925 to attempt to convey the fee simple to a mortgagee, he would only obtain a term of 3,000 years: L. P. Act, 1925, s. 85 (2). A charge by way of legal mortgage has all the advantages of a mortgage by demise and will be adopted in practice: L. P. Act, 1925, s. 87 (1). A mortgage by demise or sub-demise can be converted into a charge by way of legal mortgage: *ib.*, s. 87 (2).

payment to the Mortgagees of the principal sum of £—— [upon a joint account (*e*)] with interest thereon as therein mentioned :

(2) By virtue of the Law of Property Act, 1925 [First Schedule, Part VII], the said property became vested in the Mortgagees for a term of 3,000 years without impeachment of waste, and the fee simple therein became vested in the Vendor subject to the said mortgage term.

(3) The Vendor has agreed to sell the property hereinafter described to the Purchaser for an estate in fee simple in possession free from incumbrances at the price of £—— :

(4) The principal sum of £—— and no more is now owing to the Mortgagees upon the security of the recited Mortgage, all interest thereon having been paid as they hereby acknowledge, and they have agreed on receiving the sum so due to them [on receiving the sum of £——(*f*)] [being satisfied with the security which will remain after the execution of these presents (*g*)] to join in this Conveyance in manner hereinafter appearing.

No. 2A.
The like, where the mortgage is made after 1925 by legal charge.

(1) By a Legal Charge dated, &c., and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor being then seised in fee simple in possession free from incumbrances of the property hereinafter described, charged that property [with other property] by way of legal mortgage with the payment to the Mortgagees of the principal sum of £—— and interest thereon as therein mentioned :

(2) and (3) [*Will be the same as* (3) *and* (4) *in the last Form, save that the expression* " Legal Charge " *will be used in place of* " Mortgage."]

No. 3.
Mortgage of freeholds where the Mortgagees are selling under their statutory power of sale.

(1) By a Mortgage dated the ——, and made between —— (*the Mortgagor*) of the one part and the Vendors (*h*) of the other part, the property hereinafter described was conveyed to the Vendors in fee simple by way of mortgage for securing payment by the said —— (*Mortgagor*) on the day therein mentioned and since passed of the sum of £—— advanced by them [upon

(*e*) These words are only necessary where the mortgage is made before 1882 and some of the mortgagees are dead : L. P. Act, 1925, s. 111, replacing Conv. Act, 1881, s. 61. If that is the case the names of the original mortgagees will be set out in the recital of the mortgage and the deaths recited.

Joint account.

(*f*) These words will be used where the mortgagees release part of their security and receive part of the purchase-money.

(*g*) These words will be used where the mortgagees release part of their security without receiving any consideration.

(*h*) In this case the mortgagees will be defined as the vendors.

a joint account (*i*)] to the said —— (*Mortgagor*), with interest thereon as therein mentioned:

(2) By virtue of the Law of Property Act, 1925, First [Schedule, Part VII], the said property became vested in the Vendors for a term of 3,000 years without impeachment of waste, but they are selling the fee simple therein under their statutory power [*or where there is an express power operating under L. P. Act*, 1925, *s.* 88 "under the express power hereinafter mentioned as extended by the Law of Property Act, 1925"].

[*Add the following form if required*].

No. 4.

Mortgage of freeholds where Mortgagees are selling under an express power of sale (*j*)

(3) The said Mortgage contained a power for the Vendors and the persons deriving title under them at any time after the day therein mentioned and since passed without any further consent by the said —— (*Mortgagor*) or the persons deriving title under him to sell the said property [either by public auction or by private contract, and subject to any conditions as to title or otherwise as the Vendors or the persons deriving title under them (*k*) should think fit, with power for the Vendors and the persons deriving title under them (*k*) to execute assurances and give effectual receipts for the purchase-money (*l*)].

No. 4A.

Mortgage of freeholds made after 1925 where the mortgagees are selling.

BY a Legal Charge dated, &c., and made between —— (*the Mortgagor*) of the one part and the Vendors of the other part,

(*i*) These words are only inserted where some of the mortgagees are dead: see L. P. Act, 1925, s. 111. In that case the names of the original mortgagees will be set out in the recital of the mortgage and the deaths recited.

(*j*) L. P. Act, 1925, s. 101, applies only if and as far as a contrary intention is not expressed in the mortgage deed, and takes effect subject to the terms of the mortgage deed: sub-s. 4. In *Life Interest, &c., Corp.* v. *Hand-in-Hand, &c., Society* [1898], 2 Ch. 230, 239; 67 L. J. Ch. 548, it was held that an express power of sale did not exclude the statutory power. The point in this case, that until conveyance it was open for a purchaser to enquire how the power of sale had become exercisable, arising under the Conv. Act, 1881, s. 21 (2), replaced by L. P. Act, 1925, s. 104, was disposed of by the Conv. Act, 1911, s. 5, replaced by L. P. Act, 1925, s. 104 (2), with a provision that if the mortgage is made after 1925 the purchaser is not to be concerned to see that any requisite leave of the court has been obtained. This could not have been made retrospective because of the Courts (Emergency Powers) Acts; but it covers the case in s. 110 (sale after bankruptcy).

Effect of express power of sale after 1881.

"Leave of the court."

(*k*) The words "or the persons deriving title under them" will only be inserted where some of the original mortgagees are dead or if there have been transfers of the mortgage, in which case the names of the mortgagees will be set out in this recital. The words in brackets will not be used where the mortgage is made after 1881.

Old powers of sale.

(*l*) S. 19 of the Conv. Act, 1881, only applied to mortgages executed after 1881: see sub-s. 4. As to mortgages executed before 1882, see Lord Cranworth's Act, 1860 (23 & 24 Vict. c. 145, Part II), repealed by s. 71 of the Conv. Act, 1881, which preserved in the case of mortgages prior to 1882, the powers conferred by the former Act.

the property hereinafter described was charged by way of legal mortgage with the payment to the Vendors of the sum of £—— on a day therein mentioned and since passed, with interest thereon as therein mentioned.

No. 5. That principal and interest is due and agreement for sale.

THE said sum of £——, and an arrear of interest thereon, are still due to the Vendors upon the security of the recited security and they have in exercise of their power of sale agreed to sell the property hereinafter described to the Purchaser for an estate in fee simple in possession free from incumbrances at the price of £——.

No. 6. Mortgage of freeholds made after the commencement of title and subsequently discharged.

BY a Mortgage dated the ——, and made between the Vendor of the one part and —— and —— (*Mortgagees*) of the other part, the Vendor conveyed the property hereinafter described to the said —— and —— (*Mortgagees*) in fee simple,(*m*) subject to redemption by the Vendor on payment of the sum of £—— then advanced by the said —— and —— (*Mortgagees*) and interest thereon as therein mentioned.

No. 6A. The like when made after 1925.

BY a Legal Charge dated, &c., and made between the Vendor of the one part and —— (*Mortgagees*) of the other part, the Vendor charged the property hereinafter described by way of legal mortgage with the payment by him to the —— (*Mortgagees*) of the sum of £—— (then advanced by them) and interest thereon, but subject to cesser on redemption by the Vendor.

No. 7. Further charge made before 1926.

BY a Further Charge dated the ——, and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor charged the property comprised in the recited Mortgage with the payment to the Mortgagees of the further sum of £——, as well as the said sum of £——, making the aggregate mortgage debt of £——, with interest thereon as therein mentioned.

No. 7A. Further charge made after 1925.

BY a Further Legal Charge dated, &c., and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor charged the property comprised in the first-mentioned Legal Charge by way of legal mortgage with the payment to the Mortgagees of the further sum of £——, as well as the said sum of £——, making the aggregate mortgage debt of £——, with interest thereon as therein mentioned.

(*m*) Or "and their heirs" if the mortgage is dated before 1882. Strictly, recitals should, from the date when they commence, state everything which affects the legal estate. A practice has however grown up of ignoring mortgages which have been discharged; this practice will be frequently adopted after 1925, for mortgage terms cease when the money secured is repaid.

No. 8.

Transfer (of mortgage of freeholds) made before 1926.(*n*)

BY a Transfer of Mortgage dated the ——, and made between the said —— and —— (*Mortgagees*) of the one part and —— (*Transferee*) of the other part, the said —— and —— (*Mortgagees*) assigned the said mortgage debt of £—— and the interest thereon to the said —— (*Transferee*) absolutely, and also conveyed to him in fee simple (*o*) the property comprised in the recited Mortgage [and then remaining vested in the said —— and —— (*Mortgagees*) (*p*)], subject to the right of redemption then subsisting therein, on payment of the said mortgage debt of £—— and the interest thereon.

No. 8A.

Transfer (of mortgage) made after 1925.

BY a Transfer of Mortgage dated, &c., and made between the said —— (*Mortgagees*) of the one part and —— (*Transferee*) of the other part, the said —— (*Mortgagees*) conveyed and transferred to the said —— (*Transferee*) the benefit of the recited Mortgage [Legal Charge] [and Further Charge].(*q*)

No. 9.

Reconveyance (of mortgage of freeholds) made before 1926.

BY a Reconveyance dated the ——, and made between the said —— and —— (*Mortgagees*) of the one part and the said —— (*Mortgagor*) of the other part in consideration of the payment by the said —— (*Mortgagor*) of all principal money and interest then owing upon the security of the recited Mortgage, the said —— and —— (*Mortgagees*) conveyed the property comprised in the recited Mortgage unto the said —— (*Mortgagor*) in fee simple discharged from all principal money and interest secured by and all claims under the recited Mortgage.

No. 9A.

Reconveyance (of mortgage of freeholds) made after 1925. (Endorsed Receipt.)

BY a Receipt dated, &c., signed by the said —— (*Mortgagees*) and endorsed on the recited Mortgage [Legal Charge] the said —— (*Mortgagees*) acknowledged that they had received the sum of £—— representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the recited Mortgage [Legal Charge] [and Further Charge] together with

---

Notice of trusts affecting mortgage debts.

(*n*) The fact that a transfer of a debt exceeding £2,000 bears only a 10*s.* stamp does not fix the transferee with a notice of a trust, but the stamp must be adjudicated: L. P. Act, 1925, s. 112; see also *Re Soden and Alexander* [1918], 2 Ch. 258; 87 L. J. Ch. 529. Even if notice is given of a trust affecting a mortgage debt, it will not, apart from notice of fraud, be necessary to investigate the equitable title to the mortgage debt or the appointment or discharge of trustees thereof: L. P. Act, 1925, s. 113.

(*o*) Or "and his heirs" if the transfer was made before 1882.

(*p*) These words are only necessary where part of the original security has been sold or released.

(*q*) For the form of transfer made after 1925 and the effect thereof, see L. P. Act, 1925, s. 114, and 3rd Sch., Form 1.

all interest and costs, the payment having been made by the said —— (*Mortgagor*).(*r*)

No. 10.

Settlement of freeholds on a sale under the Settled Land Act. (Vesting Deed.)

(1) By a Vesting Deed dated the ——, and made between the Vendor of the 1st part, —— of the 2nd part, and —— of the 3rd part (made in consideration of the marriage solemnised on the —— day of —— between the Vendor and the said ——) the property hereinafter described (with other property) was declared by the Vendor (who was then seised thereof for an estate in fee simple in possession free from incumbrances) to be vested in himself in fee simple Upon the trusts declared concerning the same by a Trust Instrument of even date therewith and therein referred to, and the Vendor thereby declared that the Trustees [*or* ——] were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 [*add if new appointments have been made*, and that the power of appointing new trustees of the Settlement was vested in him during his life].

(2) As appears from the —— Schedule hereto the trustees are the present trustees of the Settlement for the purposes of the Settled Land Act, 1925.(*s*)

No. 11.

Resettlement of freeholds on a sale under the Settled Land Act where the son has become the tenant for life on the death of his father. (Vesting Assent.)

(1) By a Vesting Assent dated the —— day of ——, and made by ——, &c. (hereinafter called the Executors) as the personal representatives of X. Y., late of —— who died on the —— day of —— and whose Will the Executors proved on the —— day of —— as respects the settled land hereinafter mentioned the Executors assented to the vesting in the Vendor of the property hereinafter described (with other property) for an estate in fee simple Upon the trusts declared concerning the same by a Resettlement dated, &c., and made, &c. [*or* by a Trust Instrument dated, &c.] and the Executors thereby declared that they were the trustees of the Settlement for the purposes of the Settled

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(*r*) For the form and effect of this Receipt, see L. P. Act, 1925, s. 115, and 3rd Sch., Form 2; the receipt being for a final payment must be stamped *ad valorem* as a reconveyance unless it is given by a building, friendly, industrial or provident society · s. 115 (9). But seeing that a mortgage term will cease as soon as the mortgage money is discharged (L. P. Act, 1925, s. 116), an ordinary receipt may in some simple cases be accepted; it would not however imply any covenants or have the statutory vesting effect supplied by s. 115. For under that section the receipt will in proper cases operate as a transfer: sub-s. (2); the *ad valorem* transfer stamp is at the same rate as a reconveyance stamp: sub-s. (5).

Stamp on Reconveyance.

(*s*) As to this recital, see S. L. Act, 1925, ss. 4, 5, 35, 110; 1st Sch., Form 2. Changes among the trustees of the settlement, so far as the legal title is concerned, are evidenced by separate deeds of declaration (*ib.*, s. 35), and by endorsement on the vesting instrument: T. Act, 1925, s. 35 (2). The actual appointments of new trustees do not come on the title.

Sale under S. L. Act.

Land Act, 1925, and that the power of appointing new trustees of the Settlement was vested in the Vendor during his life.(*t*)

(2) Under and by reason of the Deeds and facts mentioned in the —— Schedule (*u*) hereto the trustees are the present trustees of the said Resettlement [Trust Instrument] for the purposes of the Settled Land Act, 1925.

No. 12.

THE —— SCHEDULE.

Schedule showing appointments of new Trustees.

Particulars, documents, and facts relating to the appointment of new Trustees of the above-mentioned Resettlement [Will] [Trust Instrument].

10th March, 1926. On this date the said (*one of the Trustees*) died.

1st July, 1926. By a Deed of Declaration of this date made between——(*person having power to appoint new trustees*) of the 1st part, the said —— (*retiring Trustee*) of the 2nd part, and the Trustees (*v*) of the 3rd part, the parties thereto in exercise of the power for that purpose conferred on them by section thirty-five of the Settled Land Act, 1925, declared that the Trustees had become and were the trustees of the Settlement referred to in the above recited Vesting Instrument for the purposes of th eSettled Land Act, 1925.

Representation to settled land.

(*t*) As to the recital in the text, see S. L. Act, 1925, s. 7 (i); 1st Sch., Form 5. Under the Ad. of E. Act, 1925, s. 22, probate will be granted to the trustees of the settlement limited to the land of which the testator was tenant for life at his death. Where he dies intestate letters of administration will be granted to them limited to the settled land: Jud. Act, 1925, s. 162.

Death duties.

A personal representative as a condition of giving an assent may require security for the discharge of death duties, but he is not entitled to postpone the giving of an assent merely because of the subsistence of the duties if reasonable arrangements have been made for discharging them: Ad. of E. Act, 1925, s. 36 (10). Under S. L. Act, 1925, s. 8 (3), he will consider whether satisfactory provision will be made for payment of the duties; he can, when conveying by deed, reserve a term of years to himself on trust to indemnify his estate against claims for duties, but this will seldom be required for he will remain a S. L. Act trustee.

Compound Settlements.

If there is a compound settlement, then the trustees of that settlement will be the trustees to name in the vesting instrument: S. L. Act, 1925, s. 1 (1). It will seldom be necessary to apply to the court for the appointment of trustees of compound settlements: *ib.*, ss. 22, 31-33.

(*u*) For a form of schedule, see next Form.

(*v*) "The Trustees" will be defined in the deed, they will be the present trustees.

No. 12A.

Resettlement where son takes first life interest in the land to be sold in place of his father. (Vesting Deed.)

By a Vesting Deed dated, &c., and made between ——(hereinafter called the Father) of the 1st part the Vendor of the 2nd part and the Trustees of the 3rd part the Father conveyed the property hereinafter described (with other property) to the Vendor in fee simple to be held by the Vendor Upon the trusts declared concerning the same by the Will dated ——, and proved —— of the late —— deceased as varied by a Trust Instrument bearing even date with the said Vesting Deed, and made, &c. And by the said Vesting Deed it was declared that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 [And that as respects the property conveyed by the said Vesting Deed the power of appointing new trustees of the Settlement was vested in the Vendor during his life].(*w*)

No. 13.

Settlement made by Will of freeholds the property to be sold having been acquired with capital money. (Vesting Instruments.)

(1) By a Vesting Assent made the ——, by the Trustees as the personal representatives of A. B., who died on, &c., and whose Will was proved by the Trustees on the —— day of —— the Trustees assented to the vesting in the Vendor of certain property in the county of —— for an estate in fee simple free from incumbrances to be held by the Vendor Upon the trusts declared concerning the same by the said Will And also declared that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 [And that the power of appointing new Trustees of the Settlement was vested in the Vendor during his life].(*x*)

(2) By a Subsidiary Vesting Deed dated, &c., and made between H. K. of the 1st part, the Trustees of the 2nd part and the Vendor of the 3rd part (in consideration of the sum of £—— paid to the said H. K. by the Trustees by the direction of the Vendor) the said H. K. conveyed the property hereinafter described to the Vendor in fee simple to be held by him upon and subject to the same trusts and powers as were declared by the recited Vesting Assent by reference as aforesaid with respect to the property therein comprised.(*y*)

No. 14.

Agreement for sale by tenant for life

The Vendor as estate owner under the recited Vesting Instrument has agreed to sell to the Purchaser the property hereinafter

(*w*) As to this recital, see S. L. Act, 1925, s. 7 (4). If on a resettlement the father retains his life interest, then no new vesting instrument is required, for the changes effected in the beneficial interests do not affect the right to the legal estate.

Where life interest is retained.

(*x*) See S. L. Act, 1925, s. 6.

(*y*) See S. L. Act, 1925, s. 10, and 1st Sch., Form 4.

described and the fee simple thereof in possession free from incumbrances at the price of £——.

No. 15.

Conveyance of freeholds upon trust for sale.

By a Conveyance dated the ——, and made between the said —— (*husband*) of the 1st part, the said —— (*wife*) (then —— spinster) of the 2nd part, and the Vendors (*z*) of the 3rd part (being a conveyance made in consideration of the marriage solemnised on the —— day of —— between the said —— and ——) the property hereinafter described was [with other property] conveyed to the Vendors in fee simple Upon trust to sell the same or any part thereof at the request in writing of the said —— (*husband*) and —— (*wife*) during their joint lives And to stand possessed of the net proceeds of such sale and also of the rents and profits of the premises until sale Upon the trusts therein referred to.(*a*)

No. 16.

Will devising freeholds upon trust for sale. (Assent.)

By an Assent dated, &c., and made by the Vendors as the personal representatives of X. Y., who died on, &c. (being at his death seised of the property hereinafter described for an estate in fee simple in possession free from incumbrances) and whose Will was proved by them on the —— day of —— the Vendors assented to the vesting in themselves in fee simple of the property hereinafter described (with other property) Upon trust to sell the same or any part thereof with full power to postpone the sale and to stand possessed of the net proceeds of sale and of the net rents and profits until sale Upon the trusts respectively declared concerning the same by the said Will [And declared that A. Y. of —— during her life had power to appoint new Trustees of the said Assent].(*b*)

(*z*) In this case the trustees for sale will be defined as "the vendors."

Power for trustees to sell by auction or private treaty.

(*a*) Trustees for sale, whenever the trust for sale was created, now have power to sell by auction or private treaty, &c.: T. Act, 1925, ss. 12 and 69 (1). The T. Act, 1893, s. 13, only applied where the trust was created after 1881. Lord Cranworth's Act, 1860 (23 & 24 Vict. c. 145, Part I.), conferred similar powers on trustees with express powers of sale, but required the consent of persons entitled to the rents and profits who were *sui juris*, unless their concurrence was expressly exempted by the instrument creating the trust. See now as to trusts for sale: L. P. Act, 1925, ss. 23 to 33; also Ad. of E. Act, 1925, s. 33.

Effect of assent on trust for sale.

(*b*) For a form of this Assent, see L. P. Act, 1925, 5th Sch., Form 9. A purchaser is not concerned with the trusts affecting the proceeds of sale provided the purchase money is paid to a trust corporation or to at least two individuals: *ib.*, s. 27. The will does not come on the title, but he must see that the testator was seised at his death and that probate or administration was granted to the persons who make the assent. For the effect of assents, see Ad. of E. Act, 1925, s. 36. It is assumed that the executors have been defined as "the vendors."

No. 17.

Agreement for sale, where trustees for sale are selling.

THE Vendors (*the trustees for sale*) as such trustees as aforesaid have [with the consent of the said —— and —— (*the persons required by the trust to consent to the sale*) testified by their execution of these presents] agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——.

No. 18.

Sale by personal representatives.

X. Y. being at his death seised in fee simple in possession of the property hereinafter described as to the freehold property first hereinafter described free from incumbrances, and as to the enfranchised land secondly hereinafter described subject to the manorial incidents and rights reserved to the Lord of the Manor of —— by the Law of Property Act, 1922, but otherwise free from incumbrances, died on the —— having by his Will dated the —— day of —— appointed the Vendors to be his executors, who on the —— day of —— duly proved his said Will at the Principal [—— District] Probate Registry (*c*) [*or* intestate, and Letters of Administration to his estate and effects were on the —— day of —— granted out of the Principal [—— District] Probate Registry to the Vendors].

No. 19.

Title to enfranchised land subject to manorial incidents and agreement for sale.

THE Vendor is seised of the property hereinafter described for an estate in fee simple in possession, but subject to the manorial incidents and rights belonging to the Lord of the Manor of ——, in the County of ——, and has agreed to sell the same to the Purchaser subject to the said incidents and rights but otherwise free from incumbrances at the price of £——.(*d*)

No. 20.

Agreement for compensation on extinguishment of manorial incidents.

(1) By a Compensation Agreement dated, &c., and made between A. B., the Lord of the Manor of —— (he being seised of the said manor for an estate in fee simple in possession free from

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If there has been no assent, then if the testator died after 1897 and before 1926, title can be made under L. T. Act, 1897, Part I. If he dies after 1925 then title can be made under Ad. of E. Act, 1925, by the executors or administrators.

Sales before assent.

Whether the testator or intestate dies before or after 1926 all assents made after 1925 must be in writing in favour of a named person, otherwise the assent will be void: Ad. of E. Act, 1925, s. 36 (4), (12). This is in accordance with the principle that a legal estate must not pass or shift without the aid of an instrument. But before an assent is made the person interested may be allowed to take possession: *ib.*, s. 43.

Assents after 1925 must be in writing.

(*c*) This Form is only applicable where the testator or intestate died after 1897 and the executors have not assented. The executors who have proved the will can sell without the concurrence of those who have not proved: Ad. of E. Act, 1925, s. 2 (2), replacing Conv. Act, 1911, s. 12; and as to powers, see *ib.*, s. 8.

Sale by personal representatives of freeholds.

(*d*) If this Form is used the date of the admission should be referred to in the parcels.

incumbrances *or otherwise show his right to make a title on sale*) of the one part and the Vendor (being then beneficially entitled to the enfranchised land hereinafter described for an estate in fee simple in possession free from incumbrances *or otherwise show his right to make a title to the land on sale*) of the other part it was pursuant to the Law of Property Act, 1922, agreed that the compensation for the manorial incidents saved by Part V of that Act affecting the property hereinafter described (and other property) [and of the rights of the lord in or to any mines and minerals in or under the said property and the sporting and other rights affecting that property preserved by the Twelfth Schedule to the said Act] should be the sum of £—— with interest thereon payable half-yearly at the rate of £5 10s. per cent. per annum from the date of the said Agreement until paid, which sum it was agreed should include the steward's compensation and all costs and expenses paid or incurred by the lord and recoverable from the Vendor in respect of the said extinguishment.

(2) By a Receipt dated, &c., and endorsed on the said Compensation Agreement: First, the said A. B. acknowledged that all rents, fines, reliefs, heriots and fees payable in respect of the land referred to in the said Compensation Agreement had been duly discharged And secondly, the said A. B. [*or his S. L. Act trustees or other persons entitled to give a receipt for the capital*] acknowledged the receipt of the compensation money by the said Compensation Agreement agreed to be paid and all interest (if any) due thereon.(*e*)

No. 21.

Mortgage by way of covenant to surrender (without a surrender) where Mortgagees concur with Vendor.

(1) By a Mortgage dated the —— and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor covenanted with the Mortgagees that the Vendor would surrender to the Lord of the Manor of —— in the County of —— the property hereinafter described To THE USE of the Mortgagees and their heirs according to the custom of the said Manor, subject to the usual proviso for making void the said surrender on payment by the Vendor to the Mortgagees of the sum of £ ——, with interest thereon as therein mentioned.

(2) No surrender was ever made pursuant to the foregoing covenant (*f*) but by virtue of the Law of Property Act, 1922,

Where a Mortgagee acquires a 3,000 years term under the Acts.

(*e*) For a form of Compensation Agreement, see L. P. Act, 1922, 13th Sch. Part I.

(*f*) In this case the mortgagees had an equitable mortgage, but with a right to convert it into a legal mortgage. Whether the mortgagees took a conditional surrender or were admitted makes no difference, they will get a legal term of

12th Schedule, paragraph (1) (*f*), and the Law of Property Act, 1925, 1st Schedule, the property became (subject to the manorial incidents preserved to the lord) vested in the Mortgagees for a term of 3,000 years subject to cesser on payment of the said mortgage debt and subject to the said term in the Vendor in fee simple.

(3) [*Recite Compensation Agreement, see last Form.*]

(4) The Vendor has agreed to sell the said property to the Purchaser for an estate in fee simple in possession free from incumbrances at the price of £——.

(5) The principal sum of £—— and no more is still owing to the Mortgagees upon the security of the recited Mortgage all interest having been paid as they hereby acknowledge, and they have agreed upon receiving the sum so due to them to join in these presents in manner hereinafter appearing.

No. 22.

Mortgage by way of covenant to surrender; conditional surrender and admittance of Mortgagees and agreement for sale, where Mortgagees sell under their power of sale.

(1) By a Mortgage dated the —— and made between —— (*the Mortgagor*) of the one part and the Vendors (*the Mortgagees*) of the other part, the said —— (*Mortgagor*) covenanted with the Vendors that he would surrender to the Lord of the Manor of —— in the County of —— the property hereinafter described To THE USE of the Vendors and their heirs according to the custom of the said Manor, subject to the usual proviso for making void the said surrender on payment (*g*) on a day therein mentioned and since passed by the said —— (*the Mortgagor*) to the Vendors of the sum of £—— then advanced to him with interest thereon as therein mentioned.

(2) On the —— day of —— the said —— (*Mortgagor*) out of court surrendered the said property into the hands of the Lord of the said Manor by the hands and acceptance of his steward according to the custom of the said Manor To THE USE of the Vendors and their heirs at the will of the lord according to the said custom and by and under the rents, suits and services therefor due and of right accustomed, but subject to a condition for making void such surrender if the said —— (*Mortgagor*) should on a day therein mentioned and since passed pay to the Vendors the said sum of £—— with interest thereon as therein mentioned.

(3) On the —— day of —— the Vendors were (*h*) duly admitted to the said property pursuant to the recited surrender

3,000 years. Only where a mortgagee has a mere charge without any right to a legal mortgage would he be left to his position as an equitable incumbrancer.

(*g*) If the mortgage is made before 1882 the express power of sale will also be recited.

Production to Steward; fines, &c.

(*h*) Formerly the mortgagees had to be admitted before they could surrender to the use of a purchaser. Now they can make a title under L. P. Act, 1925,

To HOLD to them and their heirs by copy of court roll at the will of the lord according to the said custom by and under the rents, suits and services therefor due and of right accustomed.

(4) By virtue of the Law of Property Act, 1922, 12th Sched., paragraph (1) (*f*), and the Law of Property Act, 1925, 1st Sched., the property became (subject to the manorial incidents preserved to the lord) vested in the Vendors for a term of 3,000 years without impeachment of waste but subject to cesser on redemption.

(5) No compensation agreement has been entered into nor has any notice to determine the compensation for the extinguishment of manorial incidents been served.

(6) The Vendors have agreed to sell the said property (*i*) to the Purchaser for an estate in fee simple in possession subject to the manorial incidents and to the minerals sporting and other rights belonging to the lord, but otherwise free from incumbrances at the price of £——.

No. 23.

Admission, conditional surrender, and statutory reconveyance of receipt.

(1) On the —— day of —— the Vendor was duly admitted to the property hereinafter described To HOLD to him and his heirs by copy of court roll at the will of the lord according to the custom of the Manor of ——, in the County of ——, by and under the rents, suits and services therefor due and of right accustomed :

(2) (*Recite covenant to surrender, see last Form.*)

(3) On the —— day of —— the Vendor out of court surrendered the said property (*continue recital of conditional surrender as in last form, substituting the names of the Mortgagees for the Vendors, and "the Vendor" for "the Mortgagor"*).

(4) By virtue, &c. (*as in* (4) *of last form to end of bracket*) vested in —— (*the Mortgagees*) for a term of 3,000 years without impeachment of waste but subject to cessor on redemption by the vendor and subject to the said term in the Vendor in fee simple.

(5) No compensation agreement (*continue as in last form*).

(6) By a Receipt dated, &c., and endorsed on the recited deed of covenant to surrender the said —— (*Mortgagees*) acknowledged that they had received the sum of £—— representing the principal money secured by the said covenant to surrender and

ss. 88, 101, 202, whether or not they relied on a covenant to surrender, with or without a conditional surrender ; but the admission is recited because it shows that when the conveyance is produced to the steward, smaller customary fines and fees will have to be paid : L. P. Act, 1922, 12th Sch., para. (8) (viii). The conveyance must be produced to the steward by the purchaser and the customary fines, &c., paid : L. P. Act, 1922, s. 129.

(*i*) The statutory power of sale is implied by the covenant to surrender, which is by deed : L. P. Act, 1925, s. 101 (i), replacing Conv. Act, 1881, s. 19.

the conditional surrender together with all interest and costs, the payment having been made by the Vendor.(*j*)

No. 24.

Settlement of enfranchised land formerly copyhold settled by reference to the uses of freeholds where the tenant for life sells, the Trustees having been on the rolls. (Vesting Deed.)

(1) By a Vesting Deed dated, &c., and made between the Trustees of the one part and the Vendor of the other part, the Trustees, for giving effect to the requirements of the Settled Land Act, 1925, declared that the property hereinafter described (being land enfranchised by the Law of Property Act, 1922, formerly copyhold of the Manor of —— to which the Trustees had been admitted as Trustees of the Settlement hereinafter mentioned) with other property was vested in the Vendor for an estate in fee simple in possession subject to the manorial incidents and rights belonging to the lord, but otherwise free from incumbrances Upon the trusts and subject to the powers and provisions upon and subject to which under a Settlement dated, &c., and made between, &c., or otherwise the same ought to be held from time to time Also that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 [And that the power to appoint new trustees of the Settlement was vested in the Vendor during his life].(*k*)

(2) The Vendor as estate owner in possession under the recited Vesting Deed has agreed to sell (*l*) to the Purchaser the property hereinafter described, and the fee simple thereof in possession subject to the manorial incidents and rights belonging to the lord and remaining unextinguished but otherwise free from incumbrances at the price of £——.

No. 25.

Settlement of enfranchised land, formerly copyhold on trust for sale, the Trustees having been admitted.

(1) By a Settlement dated the —— and made between the said —— (*husband*) of the 1st part, the said —— (*wife*) then —— spinster of the 2nd part, and the Vendors (*m*) of the 3rd part (being a settlement made in consideration of the marriage shortly afterwards solemnised between the said ——

(*j*) After 1925 no customary assurances will have any validity ; the receipt prescribed by L. P. Act, 1925, 3rd Sch., Form 2, will accordingly take the place of a warrant to enter up satisfaction of the conditional surrender; the receipt must be produced within six months to the steward under L. P. Act, 1922, s. 129, and the same payments must be made as would have been payable for a warrant to enter up satisfaction.

Receipt in place of warrant to enter up satisfaction.

(*k*) The tenant for life will be defined as " the vendor," and the trustees as " the trustees." For the form of this Vesting Deed, see S. L. Act, 1925, 1st Sch., Form 1. The legal estate in fee simple becomes vested in the vendor as tenant for life of full age under L. P. Act, 1925, 1st Sch., Pt. II, but the vesting deed is made pursuant to S. L. Act, 1925, 2nd Sch., and under s. 13 title cannot be made to the settled land until a vesting deed is executed.

Where vesting deed necessary before title can be made

(*l*) The conveyance must be produced to the steward within six months pursuant to L. P. Act, 1922, s. 129, and the fines, &c., paid.

(*m*) The trustees for sale will be defined as " the vendors."

and ——), the said —— (*husband*) covenanted with the Vendors that he would forthwith after the solemnisation of the said marriage surrender to the Lord of the Manor of —— the copyhold hereditaments therein mentioned (including the property hereinafter described) To THE USE of the Vendors and their heirs Upon trust to sell the same at the request in writing of the said —— and ——. And to stand possessed of the net proceeds of such sale, and of the net rents and profits of the premises until sale Upon the trusts therein referred to.

(2) On the —— day of —— the said —— (*husband*) out of court and pursuant to the recited covenant surrendered the said property To THE USE of the Vendors and their heirs, and they were duly admitted thereto on the —— day of ——.(*n*)

(3) By virtue of the Law of Property Act, 1922, 12th Sched., paragraph (8) (v), and the Law of Property Act, 1925, 1st Sched., Part II, the said property became (subject to the manorial incidents and other rights preserved to the lord) vested in the Vendors for an estate in fee simple on trust to sell the same as aforesaid.

No. 26.

Will devising copyholds now enfranchised to such uses as the executors should appoint for purposes of a sale, the executors not having been admitted.

(1) A. B., deceased, being at his death seised of the property hereinafter described for an estate of inheritance according to the custom of the Manor of ——, by his Will dated, &c., and proved, &c., after appointing the Vendors to be his executors and trustees, devised the said property To THE USE of such person or persons as the Vendors should at any time within twenty-one years after his death by deed appoint for giving effect to any sale,(*o*) and subject thereto To THE USE of the Vendors and their heirs, upon trust for sale as therein mentioned.

(*n*) Whenever there is a trust for sale, title must be made thereunder; if the trustees refuse to act the court can intervene under L. P. Act, 1925, s. 30; this section provides new procedure in place of S. L. Act, 1884, s. 7, which has been repealed.

The old law as to bargain and sale of copyholds.

(*o*) A mere direction to sell (*R.* v. *Wilson* (1862), 3 B. & S. 201; 32 L.J.Q.B. 9) or a devise to such uses as the executors might appoint (*Glass* v. *Richardson* (1852), 2 De G. M. & G. 658; 22 L. J. Ch. 105; *Flack* v. *Downing College* (1853), 13 C. B. 945; 22 L. J. C. P. 229) enabled the executors to make a title by bargain and sale without admittance before the lord seized *quousque* (*i.e.*, for want of a tenant), and so saved fees; see also *Holder* v. *Preston* (1769), 2 Wils. 400; *Re Heathcote & Rawson* [1913], 108 L.T. 185. This did not apply where the testator was not tenant on the rolls: *Re Townsend* [1895], 1 Ch. at p. 723; 64 L. J. Ch. 334.

Where two or more executors were appointed and one disclaimed, the remaining executors could sell by bargain and sale without admittance, for 21 Hen. 8, c. 4, applied to copyholds: *Peppercorn* v. *Wayman* (1852), 5 De G. & S. 230; 21 L. J. Ch. 827; see also *Crawford* v. *Forshaw* [1891], 2 Ch. 261; 60 L. J. Ch. 683; and Theobald on Wills, 7th ed., 435.

(2) The Vendors were never admitted pursuant to the said devise but by virtue of the Law of Property Act, 1922, 12th Sched., paragraph (8) (*b*) (*v*), and the Law of Property Act, 1925, 1st Sched., Part II, the said property became (subject to the manorial incidents and rights preserved to the lord) vested in the Vendors for an estate in fee simple on trust to sell the same as aforesaid.

No. 27.

Will devising copyholds (now enfranchised) to Trustees on trust for sale.

(1) A. B., deceased, being at his death seised of the property hereinafter described for an estate of inheritance according to the custom of the Manor of ——, in the County of ——, by his Will dated, &c., after appointing the Vendors to be his executors and trustees, devised all his real estate (*p*) (including the property hereinafter described) to the Vendors Upon trust that they or other the trustees or trustee for the time being of his said Will should sell the same and stand possessed of the proceeds of such sale upon the trusts therein mentioned.

Death and Probate

(2) The said testator died on the —— day of —— without having revoked or altered his said Will, which was on the —— day of —— duly proved at the —— Probate Registry by the Vendors.

Admission of Vendors.

(3) On the —— day of —— the Vendors were duly admitted to the said property To HOLD to them and their heirs by copy

Where a testator directed certain persons to sell, they had not to be admitted: Cruise, Dig., 3rd ed., vol. 1, s. 21, p. 315. New trustees, appointed in the place of executors before the lord seized *quousque*, could, it seems, have made title by bargain and sale without admittance, if it appeared from the Will that the power was given as an incident of office, *e.g.*, if the testator appointed A. and B. to be his executors and trustees and then directed his trustees to sell. The fact that the power was one requiring the exercise of a wide personal discretion was not sufficient to exclude the *prima facie* presumption that a power given to trustees, which enabled them to deal with the trust property, was given them as an incident of their office. *Re Smith* [1904], 1 Ch. at p. 144; *Re Bacon* [1907], 1 Ch. at p. 479; 76 L. J. Ch. 213. The case might have been stronger had the power been expressly given to the trustees for the time being of the Will.

No bargain and sale after 1925 and futility of powers of sale.

After 1925 title cannot be made by bargain and sale: L. P. Act, 1925, ss. 1 (7), 51 (1); indeed powers of sale given to personal representatives or trustees, as respects land, will be of no service, save for the purpose of constituting S. L. Act trustees, see S. L. Act, 1925, s. 30 (1), or for extending the statutory powers of a tenant for life: *ib.*, ss. 108-9. Ample powers are given to trustees for sale: L. P. Act, 1925, s. 28, and to personal representatives: Ad. of E. Act, 1925, s. 39. Where these are insufficient the court can give the requisite authority to carry out the transaction: S. L. Act, 1925, s. 64; T. Act, 1925, s. 57.

(*p*) S. 26 of the Wills Act, 1837, provided that a general devise should include copyholds, unless an intention to the contrary appeared from the Will. Where copyholds were devised in this manner the trustees formerly had to be admitted and then surrender to the use of a purchaser.

of court roll at the will of the lord according to the said custom by and under the rents, suits and services therefor due and of right accustomed.

(4) By virtue, &c. [*continue as in* (3) *of the last Form but one.*]

(5) By a Compensation Agreement [*recite this, see Form No.* 20, *supra, but in this case the trustees for sale will make the agreement with the lord of the manor.*]

(6) [*Recite the Receipt endorsed on the Compensation Agreement, see Form No.* 20, *supra.*]

(7) The Vendors have agreed to sell the said property to the Purchaser for an estate in fee simple in possession [subject to the rights reserved to the lord by the Law of Property Act, 1922, and not extinguished by the said Compensation Agreement but otherwise] free from incumbrances at the price of £——.

No. 28.

Lease, mesne assignments, agreement for sale

(1) By a Lease dated the ——, and made between —— of the one part and —— of the other part ALL those pieces of land situated in the Parish of ——, in the County of —— TOGETHER with the buildings erected on part thereof and known as —— ,(*q*) were demised to the said —— for the term of —— years from the —— day of —— at the yearly rent of £——, and subject to the lessee's covenants and the conditions in the said Lease reserved and contained.

(2) After divers [mesne assignments and] acts in the law (*r*) ultimately under an Assignment dated the ——, and made between —— of the one part and the Vendor of the other part, the said property became and is now vested in the Vendor for the residue of the term granted by the recited Lease.

(3) The Vendor has agreed to sell to the Purchaser the premises comprised in the recited Lease for the residue of the term thereby granted free from incumbrances at the price of £——.

No. 29.

Mortgage by sub-demise where Mortgagees are selling under their statutory power.

(1) [*Recite Lease as in last Form.*]

(2) By a Mortgage dated the ——, and made between the said —— (*Lessee*) of the one part and the Vendors (*s*) of the other part, the premises comprised in the recited Lease were demised by the said —— to the Vendors for the residue of the term thereby granted (except the last —— days thereof) by

Parcels in case of leaseholds

(*q*) In assignments of leaseholds the parcels should be set out in the recitals and not in the operative parts, thus reversing the rule as to freeholds.

(*r*) This recital must accord with the facts, *e.g.*, there may be no mesne assignments or the last disposition may be a Will appointing executors.

(*s*) In this case the mortgagees will be defined as "the vendors."

way of mortgage for securing payment to the Vendors of the principal sum of £—— and interest thereon on a day therein mentioned and since passed.(*t*) [By a Legal Charge dated, &c., and made between the said —— (*Lessee*) of the one part and the Vendors of the other part, the premises comprised in the recited Lease were charged by way of legal mortgage by the said —— with the payment to the Vendors of the principal sum of £—— on a day therein mentioned and since passed, with interest thereon as therein mentioned.]

Variations where there is a charge by way of legal mortgage.

(1) [*Recite Lease as in Form No.* 28, *supra.*]

No. 30.

Settlement of leaseholds by reference to the uses of freeholds or will bequeathing leaseholds on trusts corresponding to uses of freeholds. (Vesting Instrument.)

(2) By a Vesting Deed dated the ——, and made between the Trustees of the one part and the Vendor (*u*) of the other part, the Trustees, for giving effect to the requirements of the Settled Land Act, 1925, declared that the premises comprised in the recited Lease were vested in the Vendor for the residue of the term thereby granted, subject to the lessee's covenants and conditions therein contained Upon the trusts and subject to the powers and provisions upon and subject to which under a Settlement dated, &c., and made between, &c. [*or* under the Will dated, &c., and proved on the —— day of —— by the Vendors of X. Y., who died on the —— day of ——] or otherwise the said leasehold property ought to be held from time to time : Also that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 : [And that the power to appoint new trustees of the Settlement was vested in the Vendor during his life.] (*u*)

(*t*) Under L. P. Act, 1925, s. 89 (1), where the mortgage is by sub-demise or by charge by way of legal mortgage and the mortgagee sells under his statutory or express power, this will get in the head term ; except where the mortgage does not comprise the whole of the land comprised in the head term unless the rent has been apportioned or is of no money value or no rent is reserved : *ib.*, sub-s. 6. In the cases where the head term cannot be got in under this section it is sometimes expedient to leave it outstanding and convey only the mortgage term ; and see s. 42 (5), which allows a mortgagee to sell his mortgage term only when he cannot convey the head term. Where s. 89 does not apply if an irrevocable power of attorney is given the head term can be conveyed by virtue of such power. The power of sale must be recited if the mortgage is made before 1882. If the sale is made under Lord Cranworth's Act, 1860 (23 & 24 Vict. c. 145, repealed by the Conv. Act, 1881, except as regards mortgages made before 1882, see s. 71), the head term can be assigned by the mortgagees.

Head term got in under L. P. Act, 1925.

Cases where it should be left outstanding.

Head term got in under Lord Cranworth's Act.

(*u*) The tenant for life will be defined as the vendor, and the S. L. Act trustees as the trustees. For the form of this vesting deed, see S. L. Act, 1925, 1st Sch., Form 1. The legal term becomes vested in the vendor as tenant for life of full age under L. P. Act, 1925, 1st Sch., Pt. II , for it is assumed the settlement was made or that the testator died before 1926, but the vesting deed is made

No. 31.

Assignment of leaseholds [or Will bequeathing leaseholds] on trust for sale.

(1) [*Recite Lease as in Form No.* 28, *supra.*]

(2) By an Assignment dated the ——, and made between —— (*husband*) of the 1st part, —— (*wife*) of the 2nd part, and the Vendors (*v*) of the 3rd part, the premises demised by the recited Lease were assigned to the Vendors for the residue of the term thereby granted [*or* —— (*the Lessee*), deceased, duly made his Will dated the ——, and thereby, after appointing the Vendors to be his executors and trustees, bequeathed to them his leasehold property (including the premises comprised in the recited Lease)] Upon trust [at the request in writing of the said —— and ——] to sell the same (*w*) and to stand possessed of the net proceeds of sale and also of the rents and profits of the premises until sale Upon the trusts therein referred to.

[(3) The said —— died on the —— day of —— without having revoked or altered his said Will, which was on the —— day of —— duly proved at the —— Probate Registry by the Vendors.]

(4) By an Assent in writing dated, &c., and made by the Vendors as the personal representatives of the said —— they assented to the vesting of the property comprised in the recited Lease in themselves for the residue of the term thereby granted Upon trust [at such requests as aforesaid] to sell the same and stand possessed of the net proceeds Upon the trusts declared concerning the same by the said Will.(*w*)

No. 32.

Probate of a testator entitled to leaseholds (on a sale by executors). Variations for an intestacy.

(1) [*Recite Lease as in Form No.* 28, *supra.*]

(2) The said —— (*Lessee*) died on the —— day of —— having by his Will dated the —— day of —— appointed the Vendors to be his executors, who on the —— day of —— duly proved the same at the Principal [—— District] Probate Registry.

[The said —— (*Lessee*) died on the —— day of —— intestate and on the —— day of —— 19— Letters of Administration to his estate were granted by the —— Probate Registry to the Vendors.(*x*)]

pursuant to S. L. Act, 1925, 2nd Sch. Under s. 13 of that Act title cannot be made to the settled land until a vesting deed is executed.

(*v*) The trustees for sale will here be defined as "the vendors."

(*w*) Whenever the trust is created the T. Act, 1925, s. 12, supplies the incidental powers. For a form of an assent upon trust for sale, see L. P. Act, 1925, 5th Sch., Form No. 9.

Representation.

(*x*) The personal representatives will be defined as "the vendors." See Ad. of E. Act, 1925, s. 1; "real estate" in this section includes leaseholds: *ib.*, s. 3. The proving executors are the persons to act: *ib.*, s. 2 (2). As to the persons to whom representation will be granted, see Jud. Act, 1925, ss. 161 to 166; and

SECTION II.

Parcels.(*a*)

No. 1.

A piece of land.

ALL THAT piece of land known as ——, situated in the Parish of ——, in the County of ——, containing —a. —r. —p. or thereabouts [and bounded on the north by land of —— and on all other sides by land of ——, which piece of land is now in the occupation of —— as yearly tenant thereof, and is] delineated on the plan (*b*) hereto annexed and thereon edged ——.

No. 2.

An estate where described in Schedule.

ALL THOSE pieces of land situated in the Parishes of —— and ——, in the County of ——, containing in the whole —a. —r. —p. or thereabouts, and known as the —— Estate, and more particularly described in the —— Schedule hereto and delineated on the plan hereto and thereon edged —— TOGETHER with the farmhouse known as —— and the cottages and other buildings erected thereon or on parts thereof.

Variation where mines, minerals, and powers of working are reserved.

[EXCEPT AND RESERVED (*c*) in fee simple out of this conveyance to the Vendor and his successors in title:(*d*)

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as to the number of personal representatives: *ib.*, s. 160. As to land settled previously to the death of the tenant for life in whom the legal estate is vested as trustee, see Ad. of E. Act, 1925, ss. 22 to 24.

(*a*) In the case of registered land detailed parcels are seldom used, a mere reference to the registered title (as in the prescribed form of transfer No. 19) being sufficient. Where part of a registered property is conveyed the prescribed form No. 20 is likewise sufficient. If a schedule is desired or a reservation of minerals or grant of easement, or if the sale is of a manor or other incorporeal property the following forms can be easily adapted.

The use of plans.

(*b*) Care should be taken that the plan is as accurate as possible, see Dart, 7th ed., 554; *Eastwood* v. *Ashton* [1915], A. C. 900; 84 L. J. Ch. 671; in most cases the ordnance survey is now used as the basis of the plan. As to how far the courts will be guided by a plan on a deed, see *Willis* v. *Watney* (1881), 51 L. J. Ch. 181; *Micklethwait* v. *Newlay, &c., Co.* (1886), 33 Ch. D. 133; *Horne* v. *Struben* [1902], A. C. 454; 71 L. J. P. C. 88; *Mellor* v. *Walmsley* [1904], 2 Ch. 525; [1905], 2 Ch. 164; 74 L. J. Ch. 475; *Re Sansom and Narbeth* [1910], 1 Ch. 741; 79 L. J. Ch. 491; *Rudd* v. *Bowles* [1912], 2 Ch. 60; 81 L. J. Ch. 277; see also 26 Law Q. Rev. 268. As to what plans are admissible as evidence, see *Trafford* v. *St. Faith's Rural Council* [1910], 74 J. P. 297; *Frost* v. *Richardson* [1910], 103 L. T. 22; *R.* v. *Norfolk Co. Council* [1910], 26 T. L. R. 269; *Copestake* v. *West Sussex Co. Council* [1911], 2 Ch. 331; 80 L. J. Ch. 673; *A.-G.* v. *Horner* [1913], 2 Ch. 140; 82 L. J. Ch. 339.

Easements *in futuro*.

(*c*) In reserving easements it should be borne in mind that the reservation of an easement *in futuro* which may come into force at a time beyond the period allowed by the rule against perpetuities is bad: *Sharpe* v. *Durrant* [1911], 55 Sol. J., 423; but subject to the exceptions in L. P. Act, 1925, s. 162 (1) (*d*).

Words of limitation

(*d*) A tenant for life will have the legal estate in settled land vested in him, and on his death it will pass to the trustees of the settlement as his special personal representatives; thus the expression "successors in title" or "persons deriving title under" an absolute or limited owner can be used

ALL mines, minerals, and mineral (*e*) substances in, under, or upon the lands hereby conveyed TOGETHER with full power for the Vendor and his successors in title, owners and lessees for the time being of such mines, minerals, and mineral substances—

(a) to work and get the same [either by entry on the surface or] by underground workings [only];

(b) without any obligation to leave any subjacent or lateral support for the surface or any buildings for the time being erected thereon or for any adjoining minerals;

(c) for the purpose of such workings from time to time or at any time [with or without horses, carts, waggons, machinery, and other implements, materials and things, to enter upon and use the surface and sink pits and] to do all [other] acts and things necessary or proper for working or getting such mines, minerals, and mineral substances:

Provided that [nothing herein contained shall confer on the Vendor any right to enter on the surface and that] proper compensation shall be paid to the Purchaser or other the owner for the time being of the surface in respect of any damage to the surface or to any buildings thereon by reason of the exercise of the powers and rights reserved as aforesaid, the amount of such compensation in case of dispute to be settled by the arbitration of two arbitrators, or their umpire, pursuant to the provisions of the Arbitration Act, 1889, or any statutory modification thereof.(*f*)]

No. 3.

Freehold land and buildings. Variation where the land is taken under

ALL THOSE pieces of land situated in the Parish of ——, in the County of ——, containing in the whole —a. —r. —p. or there-

indiscriminately without any inaccuracy. Save where an entailed interest is to be created (L. P. Act, 1925, s. 130), no technical words of limitation are required: *ib.*, s. 60. The word "heirs" should be avoided as no longer having any meaning as a word of limitation.

Exception of mines and minerals.

(*e*) An exception of "all mines and veins of *coal* in or under" land has been held to authorise the construction of underground roads for carrying coal along strata which did not actually form part of a seam: *Batten Pooll* v. *Kennedy* [1907], 1 Ch. 256; 76 L. J. Ch. 162.

Subsidence.

(*f*) This form negatives an implied right to cause subsidence without paying compensation: *Jones* v. *Consolidated Anthracite Colliery & Lord Dynevor* [1916], 1 K.B. 123; 85 L. J. K. B. 465. Under L. P. Act, 1925, s. 65, the reservation will create legal rights to work the minerals in the prescribed manner without the deed being executed by the purchaser, thus overruling *Wickham* v. *Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153; *May* v. *Belleville* [1905], 2 Ch. 605; 74 L. J. Ch. 678. In most cases however it will be necessary, for the purpose of evidencing the title to the excepted minerals, to take the conveyance in duplicate. The rule against perpetuities does not apply to the reserved powers: L. P. Act, 1925, s. 162 (1) (*d*).

abouts TOGETHER with the buildings thereon known as ——, and more particularly delineated on the plan drawn on these presents and thereon coloured —— [(*g*) and numbered —— on the plan and book of reference deposited under the provisions of the said Act of 19—] [(*h*) being part of the land registered under the Land Registration Act, 1925, under the heading District ——, Title No. ——, Property ——].

statutory powers, and where the land has been registered under the L. R. Act, 1925.

No. 4.

Land conveyed to a Railway Company, where minerals are intended to pass.

ALL THAT strip of land situated in the Parish of ——, in the County of ——, containing —a. —r. —p. or thereabouts, and more particularly delineated on the plan hereto and thereon coloured —— and numbered — on the plan and books of reference deposited under the provisions of the said —— Act of 19— TOGETHER with the mines and minerals within or under the same.(*i*)

No. 5.

A messuage. Variation where former and modern descriptions differ.

ALL THAT piece of land situate in the Parish of ——, in the County of ——, with the messuage and other buildings thereon [formerly known as —— Cottage, but now] known as —— (*number*) —— Street, and more particularly delineated on the plan hereto and thereon coloured ——.

No. 6.

Land with a house recently erected, and with a right of way in common with occupiers of other houses.

FIRST, ALL THAT piece of land situate in the Parish of ——, in the County of ——, on the north side of a new road or street now being constructed and called or intended to be called —— Road, and which piece of land is more particularly delineated on the plan (*j*) hereto and thereon coloured —— TOGETHER with the messuage lately erected thereon and known as or intended to be known as —— (*number*) —— Road aforesaid.

Right of way, when granted *de novo*.

AND SECONDLY, full right and liberty for the Purchaser, and his successors in title, and all persons authorised by him or them,(*k*) in common with the owners and occupiers of the other

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(*g*) Where the land is taken under compulsory powers the special Act authorising the purchase will be referred to in the recitals.

(*h*) The conveyance will contain a recital that the vendor is the registered proprietor under the L. R. Act, 1925; these parcels are only for use when the conveyance is for some reason taken off the register under s. 39 (2) or for creating minor interests under ss. 101-109.

Registered land.

(*i*) Unless expressly mentioned, mines and minerals do not pass in a conveyance to a railway company: Railways Clauses Act, 1845, s. 77.

Railway minerals.

(*j*) The plan will show the measurements and the boundaries.

(*k*) A right of way extends to all the licensees of the grantee lawfully going to and from the dominant tenement: *Baxendale* v. *North Lambeth, &c., Club* [1902], 2 Ch. 427; 71 L. J. Ch. 806. Where a right of way is granted in general terms, and words illustrative of these terms are added the grant is not limited to the expressed words: *Hammond* v. *Prentice Bros.* [1920], 1 Ch. 201; 98 L. J. Ch. 91. A grant to a person and his "visitors," &c., has been held to include pupils at school: *Thornton* v. *Little* [1907], W. N. 68. The grantee has a right

Rights incident to right of way.

messuages and property adjoining the said road, to pass and repass over and along the said road, either with or without horses, carts, carriages, motor-cars (*l*) and other vehicles, from time to time and at all times hereafter and for all purposes, but subject to the liability of the Purchaser and the persons deriving title under him to pay a rateable proportion with the other owners and occupiers aforesaid of the expense of keeping the said road in repair (*m*) until the same is taken over by the local authority, such proportion to be fixed by the Vendor's surveyor, whose decision shall be final.

No. 7.

A right of way, when granted *de novo*.

FULL right and liberty for the Purchaser, and his successors in title, owners for the time being of the land coloured —— on the plan thereto, and all other persons authorised by him or them from time to time and at all times hereafter and for all purposes, to pass and repass with or without horses, cattle, carts, carriages, motor-cars and other vehicles over and along the road coloured —— on the plan hereto.(*n*)

No. 8.

Easements, rights, and privileges generally

ALL SUCH easements, rights, and privileges as shall be necessary or proper for enabling the Purchaser and the persons deriving title under him to —— (*set out here the purposes which the easements are to serve*).

to enter upon the servient tenement for the purpose of making a proper road and repairing it: *Newcomen* v. *Coulson* (1877), 5 Ch. D. 133; 46 L. J. Ch. 459. The grantor is under no liability to do so; if the grantee wants the repairs done, he must do them himself: *per* Coleridge, J., in *Duncan* v. *Louch* (1845), 6 Q. B. 909; 14 L. J. Q. B. 187. As to the rights of the owner of adjoining land who possess a right of access appurtenant over a roadway, see *Pettey* v. *Parsons* [1914], 2 Ch. 653; 84 L. J. Ch. 81. Where a servient owner erects a gate across the road the dominant owner must shut it after exercising his right of way: *Geoghegan* v. *Henry* [1922], 2 Ir. R. 1. Legal easements can be exercised in common: L. P. Act, 1925, s. 187 (2).

(*l*) See *Grand Hotel* v. *White*, 84 L. J. Ch. 938.

(*m*) Where a right of way is already appurtenant and it is desired to refer to it the parcels will run:—

Parcels of right of way, when appurtenant.

TOGETHER with the right for the Purchaser and the persons deriving title under him in common with the other persons entitled thereto from time to time and at all times hereafter to pass and repass, &c.

Notice of grant of right.

Where a vendor grants a right over land retained by him, the purchaser should insist on notice of the grant of the right being indorsed or annexed to a title deed relating to the common title and retained by the vendor: L. P. Act, 1925, s. 200.

Registration of equitable easements as land charges.

It is only when the easement to be granted or reserved is to be held for an interest less than a fee simple or a term of years absolute that a land charge should be registered to protect it: L. C. Act, 1925, s. 10, Class D. (iii).

(*n*) The position of the road should be carefully defined, see *Deacon* v. *S.E. Ry. Co.* (1889), 61 L. T. 377.

No. 9.

A manor.

Mansion house.

Advowsons and rights of presentation.

Impropriate rectory and tithe rentcharge.

Lands described in a schedule.

No. 10.

Short form by reference to Schedule.

No. 11.

Allotment.

No. 12.

Rights (if any) in land.

No. 13.

A moiety in the proceeds of sale of land.

No. 14.

A lake or pool.

No. 15.

Manufactory with fixed machinery and plant.

FIRST,(*o*) ALL THAT the manor or lordship or reputed manor or lordship of ——, in the County of ——.

SECONDLY, ALL THAT the mansion house called ——, in the Parish of ——, in the County of ——.

THIRDLY, ALL THOSE the advowsons, donations, and rights of patronage or presentation of and to the several Churches of ——.

FOURTHLY, ALL THAT the impropriate rectory of —— and all rentcharges now payable or which shall from time to time become payable in lieu of the rectorial tithes issuing out of or payable in respect of all the messuages, and property in the Parishes of ——.

AND FIFTHLY, ALL the messuages, farms and lands, situated in the Parishes of ——, or one of them, in the County of ——, and more particularly described in the —— Schedule hereto and delineated on the plan hereto and thereon coloured ——.

ALL the property described in the —— Schedule hereto.

ALL THAT allotment or piece of land, numbered —— on the map annexed to the award of the valuer dated the —— day of ——, and made in the matter of the inclosure of —— Common in the Parish of S——, and containing —a. —r. —p., or thereabouts, which was allotted and awarded in respect of the lands lastly hereinbefore described under the Inclosure Acts.

ALL SUCH rights or interests (if any) as may now be vested in the Vendor in ALL THOSE, &c.(*p*)

ALL THAT moiety (*q*) devised by the recited Will of ——, deceased, in the net proceeds of sale and the rents and profits until sale of ALL THOSE, &c.

[TOGETHER WITH] ALL THAT piece of land covered by water situated in the Parish of ——, in the County of ——, and known as —— Lake, and more particularly delineated on the plan drawn on these presents and thereon coloured ——.

ALL AND SINGULAR the [land, manufactories, mills, buildings, boiler-house, erections, and] property mentioned in the first part of the Schedule hereto and delineated on the plan hereto

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(*o*) This Form gives the order in which the several rights and interests are generally described when they are disposed of by the same instrument.

(*p*) This Form may be useful where an allottee of a plot under an Inclosure Award is disposing of it before it is actually conveyed to him, or where no covenants for title are to be implied.

(*q*) It is impossible to have an undivided share in land which is in possession, for as soon as it falls into possession the entirety of the land is subjected to a trust for sale: L. P. Act, 1925, ss. 34-38, 102; 1st Sch., Pt. II, para. 7 (*f*); Pts. IV to VI; S. L. Act, 1925, s. 36.

Abolition of undivided shares.

and thereon coloured —— TOGETHER with the fixed machinery and plant mentioned in the second part of the said Schedule.(*r*)

No. 16.

Tithe rentcharge.(*s*)

ALL THAT the tithe commutation rentcharge, or yearly sum of £——, in lieu of the great or rectorial tithes, arising or issuing out of lands containing —a. —r. —p., or thereabouts, in the Parish of ——, in the County of ——, payable by virtue of an award dated the —— day of ——, and duly confirmed by the Tithe Commissioners for England and Wales on the —— day of ——, subject nevertheless to variation in accordance with the provisions of the Tithe Acts.

No. 17.

Enfranchised land, in a compensation agreement.

ALL THAT (*parcels as described in the court rolls*). To which property the [Tenant] [or ——] was admitted (*t*) at a court held in and for the said manor on the —— day of —— [*or* was admitted out of court on the —— day of ——].

No. 18.

Freeholds and enfranchised lands intermixed, where they cannot be distinguished.

FIRST, ALL SUCH parts as are of freehold tenure free from all manorial incidents or rights of the lord of the manor of the property described in the —— Schedule hereto.

AND SECONDLY, ALL SUCH parts as are of freehold tenure subject to manorial incidents and rights of the lord of the manor

Fixtures and moveable plant.

(*r*) When a manufactory is sold, with the machinery and plant both fixed and moveable, the fixed plant passes with the land, but it is sometimes advisable to describe it in a schedule for the purpose of identification. This does not make the deed a bill of sale within the Bills of Sale Acts: *Re Brooke* [1894], 2 Ch. 600; 64 L. J. Ch. 21. As regards the moveable plant, capable of passing by delivery, there should be a separate price for it; and a receipt for such price, with an inventory annexed, should be given by the vendor for it after the plant is delivered, see Stamp Act, 1891, s. 59 (1).

Stamp on purchase under statutory power.

Section 12 of the Fin. Act, 1895, applies to personal as well as to real property; hence a purchaser under statutory authority of land and goods must produce to the Inland Revenue a conveyance of the goods as well as of the land and pay *ad valorem* duty on the whole property: Highmore, 4th ed., 164, 181; *Eastbourne Corpn.* v. *A.-G.* [1904], A. C. 155; 73 L. J. K. B. 259.

Tithe rentcharge belonging to a vendor.

(*s*) When land is purchased it should be ascertained whether the vendor has the tithe rentcharge issuing out of it. If he has, arrangements should be made to include it in the purchase, if it is not included in the conveyance the vendor may claim it thereafter unless it has been merged. To merge tithe rentcharge it is necessary to apply to the Ministry of Agriculture.

Tithe redemption annuity.

The tithe rentcharge may be converted into a terminable annuity charged on the land.

Compensation agreement.

(*t*) For the purposes of a Compensation Agreement the description on the court rolls is followed, unless, as will usually be the case, a new description is agreed to. In default of agreement the party requiring a plan or new description will bear any additional costs incident thereto, see note at foot of 1st Sch. to the Form of a Compensation Agreement in L. P. Act, 1922, 13th Sch., Pt. I.

The tenant last admitted will not necessarily be the person to effect the Compensation Agreement, for he may have been a mere nominee. The persons to make a title to the land on a sale (*e.g.*, a tenant for life, trustees for sale, personal representatives or absolute owners) are the persons to contract.

of the property described in the—— Schedule hereto (*u*) formerly copyhold or customary land of the manor of ——. No. 19. On assignment or sub-demise of a lease.

ALL the premises comprised in and demised by the recited Lease.

ALL the premises respectively comprised in and demised by the —— Leases mentioned in the —— Schedule hereto. No. 20. The same where there are several Leases.

PROVIDED ALWAYS, that section sixty-two of the Law of Property Act, 1925, shall be read and have effect with reference to these presents as if in sub-section (1) [*or if the land conveyed has houses or other buildings thereon* in sub-sections (1) and (2) respectively] all the words between "whatsoever" and "appurtenant" were omitted therefrom.(*v*) No. 21. General words. Restriction on the effect of s. 62 of L. P. Act, 1925.

ALL THAT policy of assurance effected in the name of —— and on his own life for the sum of £—— with the —— Insurance Company dated the —— day of ——, numbered ——, and at the annual premium of £—— and the said sum of £—— and all other money to become payable thereunder and the full benefit of the said policy.(*w*) No. 22. Life assurance policy for several policies.

ALL THAT the —— share to which the Vendor is now under the recited Settlement [Will of the said ——, deceased] entitled expectant upon the death of the said —— as aforesaid in the investments mentioned in the —— Schedule hereto or the varied investments for the time being representing the same, *or* [in the proceeds of sale of the land mentioned in the —— Schedule hereto], *or* [in the residuary estate of the said ——]. No. 23. Reversionary share in personalty.

(*u*) Under L. P. Act, 1922, s. 139 (1) (vi), the Minister may by order on the application of either party declare what land shall be or be deemed to be subject to the manorial incidents in question and determine the boundaries. Either party may have the land defined by reference to the Ordnance Survey Map. Power for the Minister to define the land.

(*v*) General words are implied in every conveyance: L. P. Act, 1925, s. 62, replacing Conv. Act, 1881, s. 6. Hence, if by the contract the vendor is entitled to have the general words restricted to rights legally appurtenant to the land, the above provision should follow the habendum. In the case of *Re Peck and The London Sch. Bd.* [1893], 2 Ch. 315; 62 L. J. Ch. 598, a contract for sale of land "with the appurtenances" was held to entitle the purchaser, in his conveyance, to such general words only as he would have been entitled before 1882, and to have the operation of the section limited accordingly, see also *Re Walmsley and Shaw* [1917], 1 Ch. 93, 86 L. J. Ch. 120; *cf. Hansford* v. *Jago* [1921], 1 Ch. 322; 90 L. J. Ch. 129, where the word "appurtenances" passed a right of way enjoyed up to the date of conveyance. General words the use of "with the appurtenances" restricts the description.

(*w*) Where there are several policies they should be described in a schedule, and the parcels will be:— Several policies.

"All those —— policies mentioned in the —— Schedule hereto and the several sums thereby assured, and all other money to

Where accruing shares are to be included.

[AND ALL other (if any) the shares or interests as well original as accruing or to accrue of the Vendor in the property for the time being subject to the trusts of the recited Settlement [*or* Will].]

No. 24.

Life interest in personalty.

ALL THAT the annual income to accrue during the life of the said —— from the investments mentioned in the —— Schedule hereto or the varied investments for the time being representing the same, and all other (if any) the annual income to which the said —— is now or may become entitled under the trusts of the recited Settlement [*or* Will].

SECTION III.

Miscellaneous Forms.(*a*)

No. 1.

Provision cutting down the implied statutory covenants on the surrender of a Lease.

PROVIDED ALWAYS, that the statutory covenant implied in these presents by reason of the said —— being expressed to assign or

---

become payable thereunder and the full benefit of the said policies."

The form of schedule will be:—

THE —— SCHEDULE.

Particulars of policies effected in the name and on the life of —— hereby assigned.

No. of Policy.	Insurance Office.	Amount assured exclusive of Bonus.	Annual Premium.

Covenants for title by a tenant for life.

(*a*) In former editions the usual provisos for cutting down the covenants by a tenant for life and remainderman were given. Now, however, a tenant for life has become a trustee of the entire estate in the settled land hence will convey "as Trustee"; save that if he is an absolute owner subject to overreachable equitable interests he will convey "as Beneficial Owner" without qualification: General Conditions of 1925, cl. 25.

Title cannot be made by a tenant for life and remainderman.

Title can no longer be made by a tenant for life with the concurrence of the remainderman in fee, nor by persons having a joint equitable overriding power of appointment. In such cases the purchaser can and will insist on title being made by the tenant for life in whom the legal estate is vested, the purchase money being paid to the S. L. Act, trustees: L. P. Act, 1925, s. 42 (1); the vendors cannot rescind if the purchaser insists on his requisition: *ib.*, sub-s. 8. The object of this is to prevent the equities coming on the title, and to give as good a title as possible, for a conveyance by a tenant for life and remainderman lets in the charge for succession duty payable on the death of the tenant for life. There is no hardship in this, for after completion they can arrange with the S. L. Act trustees to commute the duty and distribute the capital money in accordance with the beneficial interests.

surrender As Beneficial Owner shall have effect as if clause (B) had been omitted from section seventy-six (1) of the Law of Property Act, 1925.(*b*)

No. 2.

Provision for converting Vendor's implied covenants for title into absolute covenants

PROVIDED ALWAYS, that for the purposes of the covenants implied in these presents under section seventy-six (1) (A) of the Law of Property Act, 1925, by reason of the Vendor being expressed to convey As Beneficial Owner, that section shall be read and have effect as if the sentence in Part I of the Second Schedule to that Act commencing with the words "notwithstanding anything by the person who so conveys" and ending with the words "knowingly suffered" had been omitted and as if the words "notwithstanding anything as aforesaid" and the words "otherwise than by purchase for value" had also been omitted wherever those words occur.(*c*)

No. 3.

Implied covenant by purchaser of leaseholds to pay rent, &c. (*e*)

THE covenants implied under section seventy-seven (1) (C) of the Law of Property Act, 1925, are incorporated in these presents.(*d*)

(*b*) Inasmuch as the person entitled to the reversion expectant on the determination of the lease will be aquainted with the matters mentioned in clause *b* of s. 76 (1) of the L. P. Act, 1925, this provision should be used on the surrender of a lease. See the covenant set out in L. P. Act, 1925, 2nd Sch., Pt. II.

(*c*) Where there is a defect in the title occurring before the last purchase for value, it is sometimes arranged that the covenant shall be made absolute, thus giving a guarantee of title and obviating the necessity for a separate deed of indemnity. Guarantee of title.

(*d*) In the case of registered land covenants similar to these are implied in transfers unless negatived: L. R. Act, 1925, s. 24.

(*e*) The real and personal estate of the covenantor is bound without the successors being named (L. P. Act, 1925, s. 80 (1)); the executors and administrators were always bound by the common law: Wms. Exors., 11th ed., 1332. The assigns of the covenantor are not mentioned in any covenants. The mention of the assigns of the covenantor had no force, except in real covenants, the burden of which was intended to be thrown on the assignee of the land; after 1925, the covenants are deemed to have been made by the covenantor on behalf of himself, his successors in title and the persons deriving title under him or them (L. P. Act, 925,1 s. 79 (1)), hence "assigns" will no longer be named. This sub-section applies even where the subject matter is not in existence when the covenant is made. Construction of covenants. (1) Covenantor.

A covenant relating to "any" land of the covenantee is deemed to have been made with the covenantee and his successors in title and the persons deriving title under him or them, and for the purposes of restrictive covenants "successors" include the owners and occupiers of the land of the covenantee, hence would include lessees; but except in this case a lessee is not, it seems, an assign of the freeholder: *Westhoughton U.D.C.* v. *Wigan, &c., Co.* [1919], 1 Ch. 159; 88 L. J. Ch. 60. It is expedient to define the land with which the benefit of the covenant is intended to run: *Rogers* v. *Hosegood* [1900], 2 Ch. 388; 69 L. J. Ch. 652; the benefit of a covenant relating to land can be made to run with it without the use of any technical expression: L. P. Act, 1925, (2) Covenantee.

No. 4.

Acknowledgment of right to production

THE Vendor[s] hereby acknowledge[s] the right of the Purchaser[s] [and each of them] to production of the documents mentioned in the —— Schedule hereto [*or* of the recited —— of ——], and to delivery of copies thereof.(*f*)

Undertaking for safe custody.

AND hereby undertake[s] for the safe custody thereof.(*g*)

THE —— SCHEDULE.(*h*).

Schedule of documents.

Particulars of documents retained in the custody of the Vendor[s].

—— 19—. Conveyance of this date made between A. B. of the one part, and C. D. of the other part.

—— 19—. Deed Poll of this date under the hand and seal of E. F.

No. 5.

Covenant by mortgagor to give undertaking for

THE Vendor hereby covenants with the Purchaser that as soon as the documents mentioned in the —— Schedule hereto or any

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s. 80 (3). The assignee of a personal covenant can sue on the covenant: L. P. Act, 1925, s. 136; and see *Re Westerton* [1919], 2 Ch. 104; 88 L. J. Ch. 392.

By L. P. Act, 1925, s. 81, a covenant with two or more jointly includes an obligation for the benefit of the survivor or survivors, and any other person to whom the right to sue on the covenant devolves; therefore it is unnecessary to mention the survivors or survivor. Where the covenant is made after 1925, it is construed as being made also with each of the covenantees: *ib.*

Right of vendor to indemnity.

Where a vendor is under liability he is entitled, apart from express stipulation, to a covenant for indemnity: *Re Poole and Clarke* [1904], 2 Ch. 173; 73 L. J. Ch. 612.

Wording of covenant to pay rent.

As to the wording of the covenant, see *Re Poole and Clarke, sup.*, see also *Gooch* v. *Clutterbuck* [1899], 2 Q. B. 148; 68 L. J. Q. B. 808, where the covenant to pay rent, &c., was almost in the same wording as that implied under the above Form, but the covenant for indemnity read "and from the payment and performance thereof respectively will keep indemnified the Vendors," and it was held that the covenantors were liable for a breach of covenant which had taken place before the assignment.

Vendor's rights under the covenant.

Under the implied covenant the vendor cannot enforce by injunction a negative covenant which the assignee undertakes to observe (*Harris* v. *Boots, Cash Chemists* [1904], 2 Ch. 376; 73 L. J. Ch. 708) or which the original covenantee does not seek to enforce: *Reckitt* v. *Cody* [1920], 2 Ch. 452.

Acknowledgment of right to production.

(*f*) This acknowledgment may safely be given by trustees or mortgagees. As to the obligations imposed by, and the rights under an acknowledgment, see L. P. Act, 1925, s. 64 (1)-(8). It is often convenient to take the acknowledgment separately under a 6*d.* agreement stamp, an agent for a corporation could sign this: L. P. Act, 1925, s. 74 (2).

Undertaking.

(*g*) As to the obligations imposed by and the rights under an undertaking, see L. P. Act, 1925, s. 64 (9)-(11). Trustees, tenants for life and mortgagees should not give the undertaking, though if a person having the statutory powers of a tenant for life is an absolute owner subject only to equitable interests which he will overreach by his conveyance he should give the undertaking as well as the acknowledgment: General Conditions of 1925.

(*h*) In this schedule it is the practice to refer merely to the names of the parties to the deeds without prefixing "the said," though they have been referred to earlier.

of them shall come into the custody of the Vendor or the persons deriving title under him, by reason of the satisfaction of the said mortgage debt or otherwise, he or they will, at the request and cost of the Purchaser or the persons deriving title under him—

safe custody when documents come into his custody.

(a) give to him or them a statutory undertaking for their safe custody;

(b) that after the said documents or any of them shall have so come into custody as aforesaid, and until such undertaking as aforesaid shall be given, the Vendor and the persons deriving title under him shall be subject to the same obligations in all respects as if such undertaking had been given while the said documents were in his or their custody.(*i*)

No. 6.

(A.) For the benefit of the —— estate at —— belonging to the Vendor or the part thereof for the time being remaining unsold and so as to bind the property hereby conveyed, the Purchaser,(*j*) hereby covenants with the Vendor that the

Restrictive covenants by Purchaser.

(*i*) This Form supplements the acknowledgment given by the mortgagees of the right of the purchaser to production of the documents. The acknowledgment is generally accepted without the covenant. The rights of a purchaser as regards deeds retained by a mortgagee are as follows:—

Covenant to give undertaking.

Rights of purchaser as regards deeds retained by mortgagee.

(1) He may require the vendor to procure from the mortgagee an acknowledgment of the right to production, or if the mortgagee cannot or will not give one, the vendor must enter into a covenant for production for what it is worth: *Re Pursell and Deakin* [1893], W. N. 152. Whether an unwilling purchaser would be bound to be satisfied with such a covenant is not clear. So long as the mortgage subsists, the covenantor would have the right, under L. P. Act, 1925, s. 97 (1), to inspect, and, it seems, to authorise the covenantee to inspect, the deeds; but if the mortgagee were to sell the remaining mortgaged property under his power of sale, and deliver the deeds to the purchaser, the covenant would become ineffective.

(2) If the mortgagee gives an acknowledgment, but declines to give an undertaking, as would generally be the case, the purchaser could not insist either on an undertaking (which would have no statutory effect), or on a covenant for safe custody from the mortgagor.

As between mortgagor and mortgagee, the latter is liable in case of the loss or destruction of the documents while in his possession or under his control: *Hornby* v. *Matcham* (1848), 16 Sim. 325; 17 L. J. Ch. 471; *Brown* v. *Sewell* (1853), 11 Hare, 49; 22 L. J. Ch. 1063; see also *James* v. *Rumsey* (1879), 11 Ch. D. 398; 48 L. J. Ch. 345, where the mortgagor was held entitled to an indemnity, but not to compensation; see Dart, 7th ed., 490 and *cf.* *Gilligan* v. *National Bank* [1901], 2 Ir. R. 513. As to handing over documents when the mortgage is discharged, see L. P. Act, 1925, s. 97 (2).

Mortgagee liable for loss of deeds.

(*j*) A restrictive covenant affecting freehold land made after 1925 must be registered as a land charge, notice alone is not sufficient: L. C. Act, 1925, s. 10, Class D. (ii); also s. 13 (2). For the power to modify or discharge restrictive covenants, see L. P. Act, 1925, s. 84.

Registration of land charge to protect a restrictive covenant.

As to covenants binding land, see *ib.*, ss. 78 to 80; there is no longer any need for the purchaser to covenant for himself and the persons deriving title under

Purchaser and the persons deriving title under him will henceforth at all times hereafter observe and perform all and singular the restrictions and stipulations contained in the —— Schedule hereto.(*k*)

[Power to release covenants and vary building scheme.]

(B.) [PROVIDED ALWAYS, that the Vendor, and his successors in title, owners for the time being of the part of the said —— Estate for the time being remaining unsold or otherwise undisposed of, may at the request of the Purchaser or the persons deriving title under him release or vary any of the aforesaid restrictions or stipulations, and so that nothing herein contained shall operate to impose any restrictions on the manner in which the Vendor or the persons deriving title under him may deal with the whole or any part of the said Estate for the time being remaining unsold or undisposed of or be otherwise deemed to create a building scheme for the said Estate or any part thereof.(*l*)]

[Purchaser not to be liable after he has parted with the land.]

(C.) [PROVIDED ALSO, that the Purchaser or other the owners for the time being of the premises hereby conveyed shall as

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him (s. 79) he is deemed to have covenanted for his successors and they include the owners and occupiers for the time being of the land purchased; similarly the covenant is deemed to have been made with the vendor and his successors, and they include the owners and occupiers of the land intended to be benefited (s. 78); but it is expedient to show what land is intended to have the benefit.

Mode of imposing restrictive covenants.

Where the mortgage deed is executed after 1911, a mortgagee selling under his power of sale may arrange for a purchaser to give restrictive or other covenants, and may enter into restrictive covenants himself to bind the land remaining unsold: L. P. Act, 1925, s. 101 (2).

Restrictive covenants by or with a mortgagee.

Where a vendor enters into restrictive covenants or grants an easement over the land retained, the purchaser may insist on notice of the covenant or rights being indorsed on or annexed to a common title deed retained by the vendor (L. P. Act, 1925, s. 200); but this does not take the place of registration of a land charge. As to registered land, notice must be entered in the register: L. R. Act, 1925, s. 50.

Notice of restrictive covenants.

(*k*) The burden of affirmative covenants will not run with the land: *Haywood* v. *Brunswick Building Society* (1881), 8 Q. B. D. 403; 51 L. J. Q. B. 73; *Re Nisbet and Potts*, [1905], 1 Ch. at p. 397; aff. [1906], 1 Ch. 386; 75 L. J. Ch. 238 and see Dart, 7th ed., 771. If performance becomes impossible the covenantor is released: *Worcester College* v. *Oxford Canal* [1911], 81 L. J. Ch. 1, 405.

Affirmative covenants.

(*l*) This is a power which a purchaser must consider carefully, for unless a building scheme is created his property may be prejudiced. And see notes to "Special Conditions," Form No. 123, p. 299, *sup.* Also *Mayner* v. *Payne* [1914], 2 Ch. 555; 83 L. J. Ch. 897, where the word "vendor" was held to include the vendors of lots bought from the original vendor.

Power to release restriction.

For a power for a tenant for life to release restrictions, see S. L. Act, 1925, s. 58; this power is exercisable by trustees for sale (L. P. Act, 1925, s. 28), and by personal representatives: Ad. of E. Act, 1925, s. 39.

regards any of the aforesaid covenants which are restrictive of the user of the land be liable only in respect of breaches which occur while he or they shall respectively be owner or owners of the land or of the part thereof in respect of which any breach occurs.]

No. 7.

Execution by attorney and attestation.

A. B., by E. F., his Attorney (*m*) .....(L.S.)

or

E. F., Attorney for A. B. (*n*) .....(L.S.)

Signed, sealed, and delivered [in the name of and (*o*)] on behalf of the within-named A. B. by E. F., his attorney, under a power of attorney dated the —— day of ——, 19—, and filed in the Central Office of the Supreme Court of Judicature (*p*) in the presence of —— (*name, address, and description of witness*).

No. 8.

Certificate under s. 73 of the Fin. (1909-10) Act, 1910, where purchase-money does not exceed £500.

IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500.(*q*)

(*m*) It is not necessary to state in the body of the deed that it will be executed by attorney; the deed will be in the same form as if it were executed by the vendor personally. See 54 Sol. J. 148 as to joint attorneys; also *Re Seymour* [1913], 1 Ch. 475; 82 L. J. Ch. 233, where a deed executed under a power of attorney which was not wide enough to effect its purpose was subsequently ratified by the actions of the donor. When the power is exercised for the purpose of passing a legal estate execution should be in the name of the donor (L. P. Act, 1925, ss. 7 and 8), though when a legal mortgagee sells and conveys the legal fee simple or head term vested in the mortgagor he will usually convey in his own name: *ib.*, ss. 88 and 89.

Powers of attorney; estate owners.

(*n*) See L. P. Act, 1925, s. 123.

(*o*) These words will be omitted if the attorney signs in his own name under s. 123 (1), but not if it comes within sub-s. (2).

(*p*) Generally as to powers of attorney, see L. P. Act, 1925, ss. 123-129; also ss. 7 and 8 as to legal estates; see also as to trustees, personal representatives and tenants for life (T. Act, 1925, ss. 22-25 and 29); as to filing in Central Office: Jud. Act, 1925, s. 219. If the power given after 1925 relates to land it must be filed unless it is handed over to the purchaser (L. P. Act, 1925, s. 127); the vendor cannot rescind because this is insisted on: *ib.*, sub-s. (3). If the power relates only to registered land, it should be filed at the Land Registry: L. R. R., 1925, r. 82.

Filing.

As to the execution of powers of attorney by or on behalf of corporations see L. P. Act, 1925, s. 74 (3), (4) and (5); and as to execution of instruments by corporations generally: *ib.*, sub-ss. (1), (2), (5) and (6). After 1925, sealing alone will not be sufficient where an individual executes a deed: *ib.*, s. 73.

Execution of powers of attorney by or on behalf of corporations.

Abolition of acknowledgments by married women.

After 1925 a married woman, whenever married, will not have to execute by deed acknowledged: L. P. Act, 1925, s. 167.

(*q*) Every conveyance where the purchase-money does not exceed £500, and which does not form part of a larger transaction, should contain this declaration to avoid the double duties imposed by the Act. A similar declaration should be used where a lease is granted at a premium which does not exceed £500, see Revenue Act, 1911, s. 15; *Highmore*, 4th ed., pp. 204-5.

Lease at premium less than £500.

Part II.

PRECEDENTS OF CONVEYANCES ON SALE.(a)

Section I.—Conveyances Arranged according to the Character of the Conveying Parties.

Group A.—Conveyances on Sales by Absolute Owners.

No. I.

CONVEYANCE *of* Freeholds. Variations *where there is a subsisting* Lease ; *also where* Restrictive Covenants *are imposed.* (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made the —— day of —— 19—, Between A. B., of ——, in the County of ——, Esqre. (hereinafter called the Vendor), of the one part and C. D., of ——, in the County of ——, Esqre. (hereinafter called the Purchaser), of the other part :

Recital of seisin and agreement for sale.

Whereas the Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described [subject to and with the benefit of the lease mentioned in the —— Schedule hereto (*b*)] and has agreed to sell the same to the Purchaser for the like estate in possession free from incumbrances at the price of £—— :(*c*)

Forms referred to.

(*a*) The forms referred to in these Precedents are the Forms in Division II., Part I, Sects. I, II, and III, *e.g.*, *Form No.* 3, *Sec. I*, means the form of recital numbered 3 in Sect. I. of Forms in Purchase Deeds. See List of Forms, p. 449.

Description of deeds.

As to describing deeds, either as deeds simply, or according to the nature of the transaction effected, see L. P. Act, 1925, s. 57 ; at any rate "Indenture" is now a misnomer. Whether or not there is any theoretical objection in anticipating the effect of the operative part by stating the nature of the deed at its commencement, there can be no question that this practice will be convenient.

Operation of conveyances.

A conveyance executed after 1925 will operate to pass the possession without actual entry, subject to all prior rights thereto, as was the case where land was appointed under the Statute of Uses : L. P. Act, 1925, s. 51.

Dilapidation money.

(*b*) Where property is sold with possession subject to a lease which expires on or before the date of completion any money paid or agreed to be paid by the lessee in respect of dilapidations may be retained by the vendor : *Re Lyne Stephens and Scott Miller* [1920], 1 Ch. 472 ; 89 L. J. Ch. 125, 287.

Form where no recitals are employed.

(*c*) See Form No. 1, Sect. I, p. 452. It is desirable to have a recital of seisin (*cf. Bolton* v. *L. S. Bd.* (1878), 7 Ch. D. 766 ; 47 L. J. Ch. 461) : *quære*

NOW THIS DEED WITNESSETH as follows :—

Conveyance to Purchaser in fee simple.

1. In pursuance of the said agreement and in consideration of the sum of £—— [on or before the execution of these presents (*d*)] paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor, as Beneficial Owner, hereby conveys unto the Purchaser.(*e*)

Parcels

All, &c. (*see Forms in Sec. II, pp.* 471, *et seq.*)

Subject to a lease.

To Hold Unto the Purchaser in fee simple (*f*) [subject to and with the benefit of the lease so far as subsisting mentioned in the —— Schedule hereto and without prejudice to any right of re-entry exercisable on breach of any covenant or condition contained in that lease, whether or not the Purchaser has notice of the breach.](*g*)

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this decision, see *Re Wallis and Grout* [1906], 2 Ch. 206; 75 L. J. Ch. 519; but in small matters recitals are sometimes dispensed with; in this case the operative part will be :—

WITNESSETH, that in consideration of the sum of £—— now paid by the Purchaser to the Vendor for the purchase of the property hereinafter described in fee simple in possession free from incumbrances (the receipt, &c.) (*continue as in text*).

If the consideration does not exceed £500, Form No. 8 of Sec. III, p. 483, should be used to avoid the double stamp duties : Fin. (1909-10) Act, 1910, s. 73.

(*d*) These words will be used where a deposit has been paid.

Quantity of estate not defined in the "premises."

(*e*) Since 1881, the "premises" (*i.e.*, the part preceding the habendum) did not in practice contain words of limitation; the estate to be taken being defined only in the habendum. This was a return to the original office of the premises. The practice of limiting the estate both in the premises and in the habendum is stated by Sheppard (Shep. Touchstone, by Preston, c. V, p. 74) to be improper, though it was formerly adopted; and see *Savill* v. *Bethell* [1902], 2 Ch. at p. 540; 71 L. J. Ch. 652.

Fee simple.

(*f*) "Fee simple" is used in these Precedents notwithstanding that under L. P. Act, 1925, s. 60, no special words are necessary to pass the fee simple, for in view of the covenants for title implied under s. 76 it is safer to show the intention. The Statute of Uses was repealed by the L. P. Act, 1922, see L. P. (Amend.) Act, 1924, 1st Sch. See also L. P. Act, 1925, s. 1 (10); Interp. Act, 1889, s. 11, hence the words "to the use of" are no longer employed. The word "simple" formerly was a necessary part of the limitation : *Re Ethel and Mitchells* [1901], 1 Ch. 954; 70 L. J. Ch. 498; *Re Ford and Ferguson* [1906], 1 Ir. R. 607. The word "assigns," which was sometimes added, never was a word of limitation.

Statute of Uses.

Right of re-entry.

(*g*) A purchaser by acknowledging the subsistence of the lease may, notwithstanding L. P. Act, 1925, s. 141 (3), waive his right of re-entry for any breach of which he has notice : *Davenport* v. *Smith* [1921], 2 Ch. 270; *per contra Atkin* v. *Rose* [1923], 1 Ch. 522; 92 L. J. Ch. 209; but see L. P. Act, 1925, s. 65 (2), which might operate to confirm the lease.

Restrictive covenant.

2. [For the benefit of the Vendor's Estate at ——and so as to bind the property hereby conveyed the Purchaser,(*h*) hereby covenants with the Vendor that the Purchaser and the persons deriving title under him will observe and perform the stipulations and conditions following [*or* contained in the —— Schedule hereto].]

(*Add the particular restrictions either here or in a schedule.*)

Acknowledgment for production and undertaking for safe custody.

3. [The Vendor hereby acknowledges the right of the Purchaser to production of [the recited —— of (*i*)] —— [the documents mentioned in the [Second] Schedule hereto] and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.]

(*Add Form No. 8, Sec. III, p. 483, if the purchase-money is £500 or less.*)

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Schedule of Lease.

[THE [FIRST] SCHEDULE.

—— 19—. By Lease of this date made between E. F. of the one part and H. K. of the other part the property hereinbefore conveyed was demised by the said E. F. to the said H. K. for the term of —— years from the —— day of ——, 19—, at the yearly rent of £—— and subject to the covenants by the lessee and the conditions therein contained.]

Schedule of documents.

[THE [SECOND] SCHEDULE.

Particulars of documents retained in the custody of the Vendor.(*j*)

—— 19—. Conveyance of this date made between —— of the one part and —— of the other part.

—— 19—. Mortgage of, &c.]

Signed, sealed, and delivered by the above-named A. B. [and C. D.] in the presence of —— (*k*)

(*h*) Or use Form No. 6, Sec. III, p. 481. If the purchaser enters into covenants, the conveyance should be executed in duplicate unless the purchaser gives to the vendor a separate acknowledgment of his right to production of the deed.

Acknowledgment and undertaking.

(*i*) See Form No. 4, Sec. III, p. 480; if there are several documents, the dates and parties should be set out in a schedule. If the documents of title are all to be handed over, no acknowledgment or undertaking will be required.

(*j*) This heading renders it unnecessary to state in the deed who has the custody. Whoever has the legal custody must give the acknowledgment.

(*k*) The name, address, and description of the witness should be given.

Execution by purchaser.

It is not necessary for the purchaser to execute, except in cases where he enters into a covenant or undertaking in the conveyance. A legal estate, such as an easement, or perpetual rentcharge, can be reserved under L. P. Act,

No. Ia.

CONVEYANCE *of* FREEHOLDS, *where the title is, or is about to be, registered under the L. R. Act*, 1925.

H.M. Land Registry.

Land Registration Act, 1925.

District ——

Title No.——

Property ——

(*Date.*) In consideration of —— pounds (£——) paid to A. B. of &c. (hereinafter called the Vendor) the receipt of which sum he acknowledges the Vendor as Beneficial Owner hereby transfers to C. D. of &c. (hereinafter called the Purchaser) the land comprised in the title above referred to [*or where part only of the land is transferred* the land edged red on the plan hereto being part of the land comprised in the title above referred to] [*or where the land is in a compulsory area and has not been actually registered* the land comprised in a Conveyance dated, &c., and made between, &c.]

[And it is hereby declared as follows:—]

1. The Purchaser hereby covenants [*restrictive covenants as in Precedent No. I, Clause* 2, *referring to the stipulations in a Schedule. If the covenants are entered into for the benefit of registered land it should be referred to by the heading under which it is registered*] And the Vendor and Purchaser hereby apply for the registration of the said covenants.

2. The Vendor hereby acknowledges [*acknowledgment as in Precedent No. I, Clause* 3. *If the title registered is absolute this will not be required for the title deeds will either be marked or retained at the registry*].

3. [*Add Form No.* 8, *Sec. III, p.* 483, *supra, if the purchase-money is* £500 *or less.*]

[*Add the requisite Schedules.*]

Signed, sealed, and delivered by the said A. B. in the presence of E. F. of &c.,

Signed, sealed, and delivered by the said C. D. in the presence of G. H. of &c.

1925, s. 65, without the purchaser joining, thus in effect reversing *Wickham* v. *Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153; *May* v. *Belleville* [1905], 2 Ch. 605; 74 L. J. Ch. 678; and see Dart, 7th ed., 564. The purchaser may nominate the witness: L. P. Act, 1925, s. 75. For execution by attorney, see Form No. 7, Sec. III, p. 483; see also *F. P. Shan* v. *Tong Shun* [1918], A. C. 403; 87 L. J., P. C. 22, for the effect of an unauthorised execution by attorney. Legal reservation

NOTE.—*It is not necessary for the Purchaser to execute unless he enters into covenants. In this case the instrument of transfer should be executed in duplicate, one part will be left at the registry and the other part handed over to the Vendor. If a plan is used it must be signed by the Vendor and by or on behalf of the Purchaser.*

No. II.

CONVEYANCE *of* FREEHOLDS *to a* SUB-PURCHASER.(*l*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*original Purchaser*), of the 2nd part, and E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part. WHEREAS :—

Seisin and agreement for sale.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described, and agreed to sell the same to the said C. D. at the price of £1,000 :

Agreement for sub-sale.

(2) The said C. D. has agreed to sell the said property to the Purchaser at the same price of £1,000 [*or* at the price of £1,050 *or* £950] :

Conveyance by Vendor at request of original purchaser to sub-purchaser in fee simple.

NOW THIS DEED WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £1,000 paid to the Vendor by the Purchaser at the request of the said C. D. (the receipt of which sum the Vendor hereby acknowledges) [*or* in consideration of the sum of £1,000 to the Vendor, and the sum of £50 to the said C. D., paid by the Purchaser, *or* in consideration of the sum of £950 paid by the Purchaser, and the sum of £50 by the said C. D. paid to the Vendor (the receipt of which sums the (*recipients*) hereby respectively acknowledge)], the Vendor, As Beneficial Owner, at the request of the said C. D. hereby conveys, and the said C. D., As Beneficial Owner, hereby conveys and confirms unto the Purchaser,

ALL, &c. (*conveyance to Purchaser in fee simple continue as in Precedent I*, p. 485, *supra.*).

IN WITNESS, &c.

Stamp on sub-purchase.

(*l*) The stamp will be *ad valorem* on the sum paid by the sub-purchaser (Stamp Act, 1891, s. 58 (4)), which provides that the conveyance is to be charged in respect of the consideration moving from the sub-purchaser, whether greater or less than the original price.

No. IIA.

CONVEYANCE *of* FREEHOLDS *to a* SUB-PURCHASER *where the title is, or is about to be, registered under the L. R. Act*, 1925.

District ——
Title No. ——
Property ——

(*Date.*) In consideration of One thousand pounds (£1,000) paid to A. B., of &c. (hereinafter called the Vendor) by E. F., of, &c. (hereinafter called the Purchaser) at the request of C. D., of, &c. [*or* In consideration of Nine hundred and fifty pounds (£950) paid to A. B., of, &c. (hereinafter called the Vendor) by E. F., of, &c. (hereinafter called the Purchaser) and of fifty pounds paid to C. D., of, &c. by the Purchaser] [*or* In consideration of Nine hundred and fifty pounds (£950) by E. F., of, &c. (hereinafter called the Purchaser) and of fifty pounds (£50) by C. D., of, &c., paid to A. B., of, &c. (hereinafter called the Vendor)] the receipt of which sum[s] the Vendor [and the said C. D.] acknowledge[s] the Vendor As Beneficial Owner by the direction of the said C. D. directing As Beneficial Owner hereby transfers to the Purchaser the land comprised in the title above referred to [*or otherwise as in Precedent No. IA, supra*].

Signed Sealed and Delivered by the said A. B. in the presence of &c.
Signed Sealed and Delivered by the said C. D. in the presence of &c.

[See note at the foot of Precedent No. IA, *supra*].

No. III.

CONVEYANCE *of* FREEHOLD HOUSES, *subject to numerous* LEASES *at* GROUND RENTS. (*Legal Estates.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of &c., (hereinafter called the Vendor), of the one part, and C. D., of &c., (hereinafter called the Purchaser), of the other part: WHEREAS— Parties.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property described in the first column of the [First] Schedule hereto, subject to and with the benefit of the several Leases mentioned in the second column of that Schedule, by which Leases the said property was demised by the Vendor to the several persons named in the third column of that Schedule for the several terms of years and at the yearly rents respectively mentioned in the fifth and sixth columns Vendor's seisin, subject to leases.

of that Schedule, and subject to the covenants and conditions in the said Leases respectively contained and on the lessees part to be observed and performed :

Agreement for sale.

(2) The Vendor has agreed to sell the said property to the Purchaser subject to and with the benefit of the said Leases at the price of £—— :

Conveyance subject to and with benefit of Leases.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration, &c. (*as in Precedent I, p.* 484), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

ALL THOSE pieces of land situated in the Parish of——, in the County of——, containing in the whole —a. —r. —p. or thereabouts, and described in the first column of the [first] Schedule hereto, and all other (if any) the property comprised in the several Leases mentioned in that Schedule TOGETHER with the messuages and other buildings erected thereon or on parts thereof, which premises are delineated on the plan drawn on these presents and thereon coloured —— ,

Habendum.

TO HOLD unto the Purchaser in fee simple, subject (so far only as the Leases may be subsisting) to and with the benefit of the said Leases and the rents thereby respectively reserved, and the covenants and conditions therein respectively contained, and on the part of the respective lessees to be observed and performed.

2. (*Acknowledgment, &c., as to documents, if necessary, Form No.* 4, *Sec. III, p.* 480.)

3. (*Add Form No.* 8, *Sec. III, p.* 483, *if the purchase-money is* £500 *or less.*)

IN WITNESS, &c.

THE [FIRST] SCHEDULE.

Description of Property	Date of Lease.	Name of Original Lessee.	Present Lessee.	Term.	Yearly Rent.
1. All that piece of land, &c. (*short description from the Lease*), and the messuage erected thereon, now known as, &c.	— 18—	X. Y.	G. H.	99 years from, &c.	£——
2. All that, &c.	— 19—	Y. Z.	J. K.	99 years from, &c.	£——

THE [SECOND] SCHEDULE.

[Particulars of documents retained in the custody of the Vendor.]

NOTE.—*If the title is registered under the L. R. Act*, 1925, *the Precedent will be the same as No.* IA, *supra, for the Leases, being long leases, will be entered in the Charges register as incumbrances and any covenants for title will be construed as if the leases had been mentioned in the instrument of Transfer*: *L. R. R.*, 1925, *r.* 77. Variation for registered land.

No. IV.

CONVEYANCE *of a* FREEHOLD REVERSION EXPECTANT *on a* LEASE *to the* LESSEE *who* PURCHASES *under an* OPTION (*m*) *to* PURCHASE *given by the* LEASE. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the one part, and C. D., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS— Parties.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described, subject to and with the benefit of the Lease mentioned in the Schedule hereto, under which Lease the Purchaser has an option to purchase the freehold reversion expectant on the determination of the term thereby granted at the price of £——: Seisin subject to option.

(2) The Purchaser has given notice to the Vendor of his desire to purchase the reversion and inheritance in fee simple of the property comprised in the said Lease expectant on the term thereby granted at the said price of £——: That Lessee has signified his desire to purchase.

NOW THIS DEED WITNESSETH as follows:—

1. PURSUANT to the provision for this purpose contained in the said Lease, and in consideration, &c. (*as in Precedent I, p.* 485, *supra*), the Vendor, As Beneficial Owner, hereby conveys and releases unto the Purchaser, Conveyance of reversion to lessee in fee.

ALL, &c. (*the parcels will follow the parcels in the Lease*):

(*m*) The option to purchase must not infringe the rule against perpetuities: *Woodall* v. *Clifton* [1905], 2 Ch. 257; 74 L. J. Ch. 555; *Worthing Corpn.* v. *Heather* [1906]. 2 Ch. 532; 75 L. J. Ch. 761; and there must be no uncertainty: see *Ryan* v. *Thomas* [1911], 55 Sol. J. 364. Option to purchase must not infringe perpetuity rule.

For the statutory powers to grant options, see S. L. Act, 1925, s. 51; L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39. Statutory powers to grant options.

As to notices, see L. P. Act, 1925, s. 196 (6).

Habendum

To HOLD unto the Purchaser in fee simple To THE INTENT that the term of —— years granted by the said Lease may forthwith merge and be extinguished in the freehold reversion.

2. (*Acknowledgment, &c., as to documents, if necessary, Form No.* 4, *Sec. III, p.* 480.)

IN WITNESS, &c.

THE SCHEDULE.

Particulars of the Lease above referred to.

—— 19 —. By Lease of this date (*recite Lease and the option to purchase*).

Variation for registered land.

NOTE.—*If the title is registered under the L. R. Act*, 1925, *the Precedent will be the same as No.* IA, *supra, save that words will be added at the end as in the above Precedent from "To the intent" to "extinguished" to show the intention to merge the term. If the leasehold title is also registered then an application should be made to the Registrar to close that title.*

No. V.

CONVEYANCE *of* ENFRANCHISED LAND *subject to* MANORIAL INCIDENTS *to a purchaser.* (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the one part and C. D., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS—

Seisin subject to manorial incidents.

(1) The Vendor is seised of the property hereinafter described for an estate in fee simple in possession, subject to manorial incidents (the property having formerly been copyhold of the manor of ——), but otherwise free from incumbrances:

Agreement for sale.

(2) The Vendor has agreed to sell the said property to the Purchaser for a like estate, subject only as aforesaid, at the price of £ ——:

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £ —— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

ALL, &c. But except out of this Conveyance the rights reserved to the lord of the said manor by the Law of Property Act, 1922,

TO HOLD (except as aforesaid) unto the Purchaser in fee simple, subject to the manorial incidents affecting the property and not extinguished by the Law of Property Act, 1922.

2. [*Add acknowledgment as to documents, if required, Form* 4, *p.* 480, *supra.*]

3. [*If the purchase-money does not exceed* £500, *add Form* 8, *p.* 483, *supra.*]

IN WITNESS, &c.(*n*)

No. VI.

CONVEYANCE *of* ENFRANCHISED LAND *subject to a* COMPENSATION RENTCHARGE. (*Legal Estate*).

THIS CONVEYANCE is made, &c. (*as in last Precedent*): WHEREAS:

Compensation agreement.

(1) [*Recite the Compensation Agreement, Form No.* 20, *p.* 461, *supra, but adding* "And it was thereby agreed that the said compensation money should be satisfied by twenty equal instalments, the first instalment to be paid on the 1st January, 19 —, with interest at £5 10*s.* per cent. per annum on the said principal sum from the date of the Compensation Agreement, and a further instalment with interest at the like rate on so much of the said principal sum as for the time being remained unpaid to be paid on every subsequent 1st January until the said principal sum should be fully paid (all interest up to date being paid with the instalments), and so long as any of the said instalments and interest remained payable it was provided that a terminable and variable rentcharge commencing from the date of the Compensation Agreement and accruing from day to day,

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(*n*) The conveyance must be produced to the steward within six months from date, and the customary payments made; the steward will then endorse it with the prescribed certificate under L. P. Act, 1922, s. 129, or if the case comes within sub-s. 10 of that section an attested copy of the conveyance will be sent to the steward with a sum of 10*s.*, who will send a receipt for the attested copy and the money. Such a receipt should be annexed to the conveyance.

Endorsed certificate.

If the title is registered under the L. R. Act, 1925, a certificate must be obtained from the steward of the discharge of the customary payments under L. P. Act, 1922, s. 129 (5), (6); this certificate must be produced to the registrar when the application is made to register the transfer. The instrument of transfer will be in the same form as if the land was ordinary freehold, the existence of the manorial incidents and the rights of the lord will be noted on the register under L. R. Act, 1925, s. 51, and the covenants for title will take effect as though the transfer was expressly made subject to them: L. R. R., 1925, r. 77.

Registered land.

It will generally be worth while for the purchaser to arrange with his vendor to enter into a compensation agreement with the lord before completion at the expense of the purchaser, see General Conditions of 1925, cl. 14 (5).

Extinguishment of manorial incidents.

but payable at the same time as the said instalments and interest, should issue out of the property hereinafter described of an amount equal to the said instalments and interest from time to time payable and so as to secure the same."]

Receipt for customary payments.

(2) By a Receipt endorsed on the said Compensation Agreement it thereby appears that all customary payments had been discharged up to the date thereof:

Seisin subject to compensation rentcharge.

(3) The Vendor is seised of the property hereinafter described for an estate in fee simple in possession, subject to the compensation rentcharge aforesaid [and to the rights of the lord of the said manor reserved by the Law of Property Act, 1922, and not included in the said Compensation Agreement], but otherwise free from incumbrances, and has agreed to sell the said property to the Purchaser for a like estate, subject only as aforesaid, at the price of £ ——:

Last payment.

(4) The said compensation rentcharge has been duly paid up to the 1st January last:

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. [*Continue as in last Precedent, omitting the exception at the end of the parcels referring to the lord's right to minerals and sporting rights if these have been acquired, save that the habendum will be*—

TO HOLD unto the Purchaser in fee simple, subject to the said compensation rentcharge.]

Covenant to pay

2. PARAGRAPH (A) of section seventy-seven, sub-section (1), of the Law of Property Act, 1925, shall apply as from the date of the last payment of the said rentcharge.

3 and 4. [*As in* 2 *and* 3 *of last Precedent.*]

IN WITNESS, &c.(*o*)

No. VII.

ASSIGNMENT *of* LEASEHOLDS *for years to a* PURCHASER. (*Legal Estate.*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the one part, and C. D., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS—

Recital of lease.

(1) By a Lease dated the ——, and made between G. H. of the one part, and the Vendor of the other part, ALL that

Registered land.

(*o*) See note to last Precedent: in the case of registered land the compensation rentcharge will be noted in the charges register. S. 77 of the L. P. Act, 1925, should be referred to in this transfer.

messuage, &c. (*parcels as described in the lease*),(*p*) were demised unto the Vendor for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to the covenants by the lessee and the conditions by and in the said Lease reserved and contained: [*or if the Vendor was not the original lessee, recite the Lease as above, substituting L. M. for the Vendor, and add*—

(2) After divers mesne assignments and acts in the law,(*q*) ultimately under an Assignment dated the ——, and made between ——, the premises became and are now vested in the Vendor for the residue of the term granted by the recited Lease :] [Assignment to Vendor.]

(2) [(3)] The Vendor has agreed to sell the premises comprised in the recited Lease free from incumbrances to the Purchaser at the price of £—— : Agreement for sale.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— on or before the execution of these presents paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor, As Beneficial Owner, (*r*) hereby assigns unto the Purchaser, Assignment to Purchaser for residue of term.

All the premises comprised in and demised by the recited Lease,

To hold unto the Purchaser for the residue of the term granted by the recited Lease and at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved Subject to rent and lessee's covenants.

(*p*) The recital of the lease should state the parcels as they are therein described. If the property at the date of the assignment is known by a different description, or any buildings have been erected on the premises since the lease, so as to require notice, this should be referred to by way of addition to the old description. Leasehold parcels by reference

(*q*) This recital must accord with the facts, *e.g.*, there may be no mesne assignments, or the last disposition may be a Will appointing executors or an assent in writing by the executors: Ad. of E. Act, 1925, s. 36. After 1926 leaseholds will pass to personal representatives under Ad. of E. Act, 1925, ss. 1 and 3, and an assent not in writing will be of no use to pass a legal estate. If such an assent has not been given title must be made by the personal representatives.

(*r*) Formerly where the legal estate in the term was outstanding, the vendor stipulated that his covenants for title should only extend to his interest, see *Stait* v. *Fenner* [1912], 2 Ch. 504; 81 L. J. Ch. 710; but under L. P. Act, 1925, s. 42 (3), he is bound to make a title to the legal term at his own cost, unless the vendor is a mortgagee and cannot convey the head term: *ib.*, sub-s. 5. Legal estates.

and contained and henceforth on the part of the lessee to be paid, observed, and performed [and subject (so far only as the same may be subsisting) to and with the benefit of the Underleases mentioned in the Schedule hereto].

Covenant by Purchaser to indemnify Vendor against rent and covenants in Lease.

2. THE covenants implied under paragraph C of section seventy-seven of the Law of Property Act, 1925, shall be incorporated in these presents.(*s*)

3. [*Add Form No.* 8, *Sec. III*, *p.* 483, *supra*, *if the purchase-money is* £500 *or less.*]

IN WITNESS, &c. (*Add Schedule of Underleases if required.*)

No. VIIA.

TRANSFER *of* REGISTERED LEASEHOLD *land* (*whole*).

H. M. Land Registry.
Land Registration Act, 1925.

District ——
Title No. ——
Property ——

(*Date.*) In consideration of——pounds (£——), I, A. B., of &c., hereby acknowledge the receipt of the said sum, and, As Beneficial owner, transfer to C. D., of &c., the land comprised in the title above referred to for the residue of the term granted by the registered lease.

Signed Sealed and Delivered by the said A. B., in the presence of——&c.

[NOTE.—*Where it is intended to negative the covenant by the transferee to pay the rent, &c., under s.* 24 *of the L. R. Act*, 1925, *the following words should be added to the form :—*

"The covenant by the transferee implied by section 24 of the Act is not to be implied."]

When purchaser bound to covenant with assignor.

(*s*) An assignee of a leasehold interest is not liable for the rent and covenants contained in the lease after he has executed an assignment of the lease to another person ; so that if the vendor of a leasehold interest is not the original lessee, but an assignee, or the representative of an assignee, he is not entitled to a covenant from the purchaser for the payment of the rent and the observance of the covenants, unless the vendor is under the obligation of a covenant entered into by him, or by the assignee whose representative he is, with a former vendor or otherwise for the payment and observance of such rent and covenants, see Dart, 7th ed., 580.

The implied covenant is for indemnity only, and does not entitle the vendor to enforce against the purchaser the observance of a negative covenant in

the lease, *e.g.*, a covenant to make no alteration of the premises, where the lessor has made no claim in that respect: *Harris* v. *Boots* [1904], 2 Ch. 376; 73 L. J. Ch. 708; nor can the vendor enforce such a covenant on breach of any condition of the lease until the original covenantee takes steps to enforce the condition: *Reckitt* v. *Cody* [1920], 2 Ch. 452; 90 L. J. Ch. 27. Indemnity, the sole object of the covenant.

In the absence of an express or implied covenant, the original lessee has a legal right to be indemnified by the holder of the lease for the time being against breaches of covenant committed during his tenancy, whether such holder takes by assignment directly from the lessee, or after mesne assignments: *Moule* v. *Garrett* (1872), L. R. 7 Ex. 101; 41 L. J. Ex. 62; but he has no such right against an underlessee: *Bonner* v. *Tottenham, &c., Bldg. Soc.* [1899], 1 Q. B. 161; 68 L. J. Q. B. 114; and see Dart, 7th ed., 313. Right of original lessee to be indemnified.

Where A., the original lessee, assigned to B., who assigned to C., who assigned to D., a man of straw, each assignment containing a covenant by the assignee with the assignor to indemnify him against the rent and covenants, and B. became bankrupt; afterwards the lessor sued A. for the rent and recovered it. A. then obtained from B.'s trustee in bankruptcy an assignment of the benefit of C.'s covenant. It was held that, by virtue of that assignment, A. could recover from C. the full amount A. could have got from B., had B. been solvent, and B. could have got from C.: *Re Perkins* [1898], 2 Ch. 182; 67 L. J. Ch. 454. When there have been several mesne assignments.

In *Gooch* v. *Clutterbuck* [1899], 2 Q. B. 148; 67 L. J. Q. B. 808, a covenant by the purchaser with the vendors, who were executors, to indemnify them against the covenants in the lease, was held to cover the breach of a covenant to repair committed by the vendors, and in respect of which proceedings had been commenced by the lessor before the assignment. The decision was founded on the special circumstances of the case and the language of the covenant, which was not in the usual form. As to the form of covenant, see *Re Poole and Clarke* [1904], 2 Ch. at p. 177; 73 L. J. Ch. 612. Indemnity against past breach.

Whether, if a vendor assigns "as beneficial owner," and the lessor afterwards sues and recovers damages from the purchaser in respect of a continuing breach of a covenant to repair, the purchaser has any remedy against the vendor under the covenant implied by virtue of L. P. Act, 1925, s. 76 (1) (*b*), on the ground that the breach commenced before the assignment, is not free from doubt. As the purchaser bought the property in its actual condition, and probably paid less for it on that account, he does not appear to have any fair claim against the vendor for indemnity. Extent of vendor's liability under L. P. Act, 1925, s. 76 (1) (*b*).

An assignment of a lease is not within the prohibition in s. 8 (1) of the Increase of Rent and Mortgage Interest Restriction Act, 1920, of the payment of a premium "as the condition of a grant, renewal, or continuance of a tenancy": *Mason, H. and B.* v. *Harris* [1921], 1 K. B. 653; 90 L. J. K. B. 993. Mortgage and Rent Restriction Acts.

Where a trustee of leaseholds retires before they are sold it may be desirable that the new trustees should arrange not to sell the lease without requiring a purchaser to keep them and the estates of former trustees indemnified in regard to future breaches. Indemnity to trustee of leaseholds who retires.

The vendor sometimes stipulates that a counterpart of the assignment shall be executed by the purchaser; but this seems unnecessary. Whether counterpart of assignment necessary.

Unless there is privity of estate between executors and a lessor, the court will not set aside assets to indemnify them against possible liabilities which may arise in respect of leases formerly held by their testator: *Re Nixon* [1904], 1 Ch. 638; 73 L. J. Ch. 446, see also *Re King* [1907], 1 Ch. 72; 76 L. J. Ch. 44. A personal representative or trustee may, after satisfying claims up to date and setting aside a fund to meet future ascertained claims, then convey free from personal liability: T. Act, 1925, s. 26. Right of personal representatives and trustees to set aside a fund for indemnity.

No. VIII.

ASSIGNMENT *of a Portion of* LEASEHOLD *property, held under one* LEASE, the *Rent being apportioned between the* VENDOR *and* PURCHASER.(*t*) (*Legal Estate.*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the one part, and C. D., of &c., (hereinafter called the Purchaser), of the other part: WHEREAS:

(1) (*Recite lease to Vendor, see Form No.* 28, *Sec. I, p.* 468, *at yearly rent of* £12, *setting out the parcels as in the Lease*):

Agreement for sale of part and for apportionment of the rent.

(2) The Vendor has agreed to sell to the Purchaser the property hereinafter described (being part of the property comprised in the recited Lease) at the price of £——, and upon the treaty for the said sale it was agreed that the said yearly rent of £12 should be deemed to be (*u*) apportioned in equal shares between the property intended to be hereby assigned and the residue of the property comprised in the recited Lease and that the parties hereto should enter into the covenants hereinafter contained:

NOW THIS DEED WITNESSETH as follows:—

Assignment by Vendor of part of premises comprised in lease to Purchaser for residue of term at apportioned rent.

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser,

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(*t*) See Prec. IX, p. 501, *inf.*, for a more usual way of effecting the transaction by means of a sub-demise.

Power of distress as security for observance of mutual covenants.

On an assignment of part of the property comprised in a lease, the purchaser and vendor can give to each other powers of distress by way of further security, without registering the assignment under the Bills of Sale Acts, 1878 and 1882; for L. P. Act, 1925, s. 189, in this respect overrules *Pulbrook* v. *Ashby* (1887), 56 L. J. Q. B. 376; *Re Willis* (1888), 21 Q. B. D. at p. 394; 57 L. J. Q. B. 634; *Stevens* v. *Marston* [1891], 60 L. J. Q. B. 192; *cf. Re Roundwood Colliery Co.* [1897], 1 Ch. 373; 66 L. J. Ch. 186. As a covenant might, in some cases, be an ineffectual remedy (see *Johnson* v. *Wild* [1890], 44 Ch. D. 146; 59 L. J. Ch. 322), clauses are added charging the respective portions of the property with the money payable under the covenants, as authorised by L. P. Act, 1925, s. 77 (7). The charge will attach to the premises in the hands of an assign or underlessee of the person making the charge, provided that a land charge is registered under L. C. Act, 1925, s. 10, Class C. (iii), by the person who does not get the title deeds. This deed should be executed in duplicate. The apportionment should be based on the value at the date of severance: *Salts* v. *Battersby* [1910], 2 K. B. 155; 79 L. J. K. B. 937. Rent becomes apportionable whenever the reversion is severed: *Mitchell* v. *Mosley* [1914], 1 Ch. 438; 83 L. J. Ch. 135.

Sale by underlease.

(*u*) As the lessor is not a party, his rights against any part of the property are not affected. Hence, the better practice is for the vendor either to assign the lease to the largest purchaser upon trust, to grant underleases to the

ALL, &c. (*here set out the particular parcels which are agreed to be sold*),

TO HOLD unto the Purchaser for the residue of the said term of —— years, subject exclusively to the apportioned yearly rent of £6 (being one moiety of the said yearly rent of £12 reserved by the recited Lease), and to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed, so far only as the same relate to the premises hereby assigned.

Covenant by Purchaser to pay his proportion of rent and to observe covenants.

2. (1) THE covenants referred to in paragraph D (i) of section seventy-seven (1) of the Law of Property Act, 1925, shall be implied on the part of the Purchaser.

Charge.

(2) The Purchaser hereby charges the property hereby assigned with all money (if any) which shall become payable under his covenant so implied in exoneration of the other property comprised in the recited lease.(*v*)

Covenants by Vendor to pay his proportion of rent and observe covenants.

3. (1) THE covenants referred to in paragraph D (ii) of section seventy-seven (1) of the Law of Property Act, 1925, shall be implied on the part of the Vendor.

Charge.

(2) The Vendor hereby charges such of the premises comprised in the recited Lease as are not hereby assigned with all money (if any) which shall become payable under his covenant so implied in exoneration of the property hereby assigned.

Powers and remedies.

4. THE powers and remedies conferred by section one hundred and ninety of the Law of Property Act, 1925, shall extend to these presents.

Acknowledgment, &c., as to Lease.

5. THE Vendor, who retains the recited Lease, hereby acknowledges the right of the Purchaser to production and delivery of copies thereof, AND hereby undertakes for the safe custody thereof.(*w*)

Certificate as to purchase-money.

6. [*Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.(*x*)

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purchasers of other lots or subject to underleases previously granted by the vendor. The simplest plan is for the vendor to grant the underleases, this can be done by trustees: *Re Judd and Poland* [1906], 1 Ch. 684; 75 L. J. Ch. 403.

Stamp on assignment at apportioned rent.

(*v*) This charge does not involve an *ad valorem* stamp on the amount of the rent apportioned: *Swayne* v. *I. R. Commrs.* [1899], 1 Q. B. 335; 68 L. J. Q. B. 234; [1900], 1 Q. B. 172; 69 L. J. Q. B. 63.

(*w*) If there are mesne assignments use Form No. 4, Sec. III, p. 480.

Registration of land charge.

(*x*) If reliance is placed on the charge then the person who does not obtain the title deeds should register a land charge under L. C. Act, 1925, s. 10, Class C. (ii).

No. VIIIA.

TRANSFER *of* REGISTERED LEASEHOLD LAND (*part*).

H.M. Land Registry.

Land Registration Act, 1925.

District ——

Title No. ——

Property ——

(*Date.*) In consideration of —— pounds (£——) I, A. B., of &c., hereby acknowledge the receipt of the said sum and As Beneficial Owner, transfer to C. D., of &c., the land shown and edged red on the accompanying plan, being part of the land comprised in the title above referred to for the residue of the term granted by the registered lease.

AND it is hereby declared as follows :—

1. The rent of —— pounds (£——) reserved by the registered lease shall be apportioned as follows :—

(a) The yearly rent of —— pounds (£——) shall be payable exclusively in respect of the land hereby transferred in exoneration of the residue of the land comprised in the said Lease :

(b) The yearly rent of —— pounds (£——) balance of the said rent of £—— shall be payable exclusively in respect of the residue of the said land in exoneration of the land hereby transferred.

2. IN substitution for the covenants implied under section twenty-four of the Act, the respective covenants set forth in Part X of the Second Schedule to the Law of Property Act, 1925, shall be implied in this transfer.

3. THE powers and remedies conferred by section one hundred and ninety of the Law of Property Act, 1925, shall extend to this transfer.

[4. Each of them the said A. B., and C. D., hereby respectively charges the land retained and the land hereby transferred with all money (if any) which may become payable under the covenant implied by him as aforesaid in exoneration of the land transferred or the land Retained as the case may be and hereby applies to the Registrar to register the respective charges requisite for giving effect to this Clause.]

[5. *Add Form No.* 8, *Sec. III, p.* 483 *if required.*]

Signed sealed and delivered &c. }

[NOTE.—*Both parties should execute the transfer.*]

No. IX.

ASSIGNMENT *to a* PURCHASER *of the* REMAINDER *of* LEASEHOLD PROPERTY *held under* ONE LEASE, *where part has been previously assigned to* ANOTHER PURCHASER *at an apportioned* RENT.(*y*) (*Legal Estate.*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the one part, and E. F., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS— Parties.

(1) (*Recite Lease to Vendor, Form No.* 28, *Sec. I, p.* 468, *at yearly rent of* £12) :

(2) By an Assignment dated the ——, and made, &c., a messuage, &c. (*describing parcels as in recited deed*) (being part of the property comprised in the said Lease, were assigned by the Vendor unto the said C. D. for the residue of the said term of —— years, subject to the apportioned yearly rent of £6, part of the said yearly rent of £12 reserved by the recited Lease, and to the covenants and conditions in the recited Lease contained, and on the lessee's part to be observed and performed so far as the same related to the property thereby assigned: And the said Assignment contained the usual mutual covenants by the said C. D. and the Vendor implied under section seventy-seven of the Law of Property Act, 1925, with mutual charges for enforcing them with the remedies implied under section one hundred and ninety of that Act : Assignment of part to former purchaser.

(3) The Vendor has agreed to sell the property hereinafter described (being the residue of the premises comprised in the recited Lease) to the Purchaser, subject as hereinafter mentioned, for the residue of the term granted by the recited Lease at the price of £—— : Agreement for sale of remainder.

NOW THIS DEED WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser : Assignment to Purchaser,

ALL the premises comprised in and demised by the recited Lease other than and except the premises comprised in the recited Assignment.

TO HOLD unto the Purchaser for the residue of the term of —— years granted by the recited Lease, subject to the yearly rent of £6 (part of the said yearly rent of £12 thereby reserved), and to subject to apportioned rent, &c.

(*y*) See notes to Prec. No. VIII.

the covenants and conditions therein contained and on the lessee's part to be observed and performed so far as the same relate to the property hereby assigned, and subject also to and with the benefit of the covenants, remedies and charges contained in the recited Assignment.

Covenants by purchaser to indemnify vendor.

2. THE covenant set forth in Part IX of the Second Schedule to the Law of Property Act, 1925, shall be implied in this Assignment as if the rent reserved by the said Lease had been legally apportioned, at the yearly sum of £6 in respect of the premises hereby assigned.

3. [*Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.,

No. X.

TRANSFER *of* REGISTERED LEASEHOLD LAND (*part*) *where the rent has previously been equitably apportioned.*

H.M. Land Registry.

Land Registration Act, 1925.

District ——

Title No. ——

Property——

(*Date.*) In consideration of —— pounds (£——) I, A.B., of &c., hereby acknowledge the receipt of the said sum and As Beneficial Owner transfer to C. D., of &c., the land comprised in the title above referred to (being part of the land comprised in the registered Lease) for the residue of the term granted by that Lease, and with the benefit of the covenants [and] remedies [and charge] annexed to the lands hereby transferred:

AND it is hereby declared as follows:—

1. IN substitution for the covenants implied under section twenty-four of the Act, the covenants set forth in Part IX of the Second Schedule to the Law of Property Act, 1925, shall be implied in this transfer as if the rent reserved by the registered Lease had been legally apportioned at the yearly sum of —— pounds (£——) in respect of the premises hereby transferred.

[2. The said C. D. applies to the Registrar to register him as proprietor of the charge created for the protection of the land hereby transferred.]

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

Signed sealed and delivered &c. }

[NOTE.—*Both parties should execute the transfer.*]

No. XI.

ASSIGNMENT *to a* PURCHASER *of one of several* LOTS *of* LEASEHOLD PROPERTY *held under* ONE LEASE, *where the* OTHER LOTS *are* ASSIGNED *at the same time to* DIFFERENT PURCHASERS *and the* RENT *is* APPORTIONED *as between* VENDOR *and* PURCHASER.(*z*) (*Legal Estate.*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the one part, and C. D., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Lease, and agreement to sell one lot to C. D. and remaining lots to other purchasers.

(1) (*Recite* LEASE *to Vendor at Rent of* £20. *See Form No.* 28, *Sec. I, p.* 468):

(2) The Vendor has agreed to sell the property hereinafter described (being part of the property comprised in the recited Lease) to the Purchaser at the price of £——, and has also agreed to sell the several properties shortly described in the first column of the First Schedule hereto (being the remainder of the property comprised in the recited Lease) to the several persons mentioned in the second column of that Schedule:

Apportionment of rent.

(3) It has been agreed that the said yearly rent of £20 shall be apportioned between the several properties sold as aforesaid, so that the property intended to be hereby assigned shall be subject to the yearly rent of £4, and that the properties mentioned in the first column of the First Schedule hereto shall be subject to the yearly rents set opposite to the same respectively in the third column of that Schedule:

Assignments to other purchasers.

(4) The properties mentioned in the first column of the said Schedule have been assigned to the several purchasers thereof respectively by four Assignments of even date herewith, and each of the said Assignments contains a covenant and charge by the Assignee thereunder similar to the covenant and charge by the Purchaser hereinafter contained:

NOW THIS DEED WITNESSETH as follows:—

Assignment to purchaser subject to apportioned rent.

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser

(*z*) The purchases should be completed at the same time by deeds of even date in the same form. A counterpart of each deed should be executed by the respective purchasers and retained by the vendor, who will give to each of the other purchasers a statutory acknowledgment and undertaking for safe custody of the several counterparts, as well as of the lease and other

Counterparts.

ALL, &c. (*parcels, expressly describing the property to be assigned*)

TO HOLD unto the Purchaser for the residue of the term of —— years granted by the recited Lease, subject exclusively to the apportioned yearly rent of £4 (part of the said yearly rent of £20 thereby reserved), and to the covenants and conditions therein contained and on the lessee's part to be observed and performed so far as the same relate to the property hereby assigned and in exoneration so far as may be of the other property comprised in the said Lease.

Covenants by purchaser to pay apportioned rent and perform covenants.

2. THE Purchaser hereby covenants with the Vendor, and also as a separate covenant with the several persons mentioned in the second column of the First Schedule hereto and with each of them,(*a*) in the terms set out in paragraph (i) of Part X of the Second Schedule to the Law of Property Act, 1925.

Charge by him of purchased premises.

3. THE Purchaser hereby charges the property hereby assigned with the payment of whatever money shall become payable under his covenant so implied as aforesaid.

Powers and remedies.

4. THE powers and remedies conferred by section one hundred and ninety of the Law of Property Act, 1925, shall be exercisable by the Purchaser and by the other purchasers mentioned in the First Schedule hereto and the persons respectively deriving title under them.

5. THE Vendor hereby acknowledges the right of the Purchaser to production of the documents mentioned in the Second Schedule hereto, and to delivery of copies thereof, AND hereby undertakes for the safe custody thereof.

[6. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

THE FIRST SCHEDULE.

Short Description of Property.	Name of Purchaser.	Apportioned Rent.

title deeds (if any). The better plan is for the vendor to sub-demise each of the lots, except the last, to purchasers at the arranged rents, and then to assign the last lot and the head term in the entirety to a purchaser subject to and with the benefit of the underleases of the other lots.

Benefit of covenant.

(*a*) A person not a party can take the benefit of a covenant: L. P. Act, 1925, s. 56; *Dyson* v. *Forster* [1909], A. C. 98; 78 L. J. K. B. 246. Covenants implied under L. P. Act, 1925, s. 77, run as respects the benefit with the land: sub-s. 5; hence it is not essential that the covenants should be made expressly with the other purchasers.

THE SECOND SCHEDULE.

Documents retained in the custody of the Vendor.

—— 19—.—The recited Lease of this date.

(*Add Documents subsequent in date to Lease, if any.*)

Even date herewith.—Counterpart Assignment of this date made between the Vendor of the one part and E. F. of the other part.

(*Counterparts of the Assignments to the other Purchasers.*)

[NOTE.—*A form for registered land is not given in this case, as this method of carrying out the transaction in regard to registered land is not recommended.*]

No. XIA.

ASSIGNMENT *to a* PURCHASER *of one of several* LOTS *of* LEASEHOLD PROPERTY *held under* ONE LEASE *where the* OTHER LOTS *are* SUBDEMISED *at the same time to* DIFFERENT PURCHASERS; VARIATIONS *where the* UNDERLEASES *cannot be granted* IMMEDIATELY. (*Legal Estate.*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the one part, and C. D., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS—

Lease and mesne assignments (if required), and agreement for sale.

(1) By a Lease dated, &c. (*Form No.* 28, *Sec. I, p.* 468, *down to the end if the Underleases are granted concurrently* (*b*).)

[*If the Underleases are to be granted subsequently, omit the Agreement for sale in Form* 28, *p.* 468, *and substitute the following :—*

[Agreement for sale, where the underleases are to be granted subsequently to the assignment.]

(2) The Vendor has agreed to sell to the Purchaser the Lot numbered —— and described in the First Schedule hereto (being part of the property comprised in the recited Lease) for the residue of the term thereby granted at the price of £——, and it was part of the said agreement that the remainder of the

(*b*) In this case the assignment and underleases will bear even date and be executed concurrently; hence it will not be necessary to provide that the purchaser shall grant underleases.

Where vendor grants underleases.

If, as is now more usual, the vendor first grants the underleases and then assigns the head lease subject, as to the parts affected, to the underleases, the assignment will be as in Prec. VII, p. 494, *supra*. The underleases will be referred to in the habendum and short particulars of the underleases will be placed in a schedule. It is recommended that the vendor should grant the underleases.

property comprised in the recited Lease should also be assigned to the Purchaser for the residue of the said term Upon trust to grant Underleases of the other Lots mentioned and described in the first column of the Second Schedule hereto to the persons and at the rents respectively mentioned in the second and third columns of that Schedule for the residue of the term granted by the recited Lease (except the last three days thereof), and in accordance with the form of the Underlease contained in the Third Schedule hereto.]

NOW THIS DEED WITNESSETH as follows :—

Assignment to Purchaser of the head term.

1. In pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser :

All the premises comprised in and demised by the recited Lease,

To hold unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed :

(1) As to the property mentioned in the First Schedule hereto for the Purchaser absolutely.

Trust to grant underleases.

(2) As to the respective properties mentioned in the first column of the Second Schedule hereto Upon trust at the request of the Vendor and at the cost of the persons accepting the same to grant forthwith Underleases thereof in accordance in all respects with the form contained in the Third Schedule hereto, with such variations only as circumstances may require, to the persons and at the rents respectively mentioned in the second and third columns of the Second Schedule hereto for the residue of the term granted by the recited Lease (except the last three days thereof).

Covenant to pay rent, &c.

2. The Covenant (C) referred to in section seventy-seven of the Law of Property Act, 1925, shall be implied in these presents.

Documents.

[3. *Acknowledgment for production of documents and undertaking for safe custody, Form No.* 4, *Sec. III, p.* 480, *if required.*

Certificate.

4. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.(*c*)

Registered land.

(*c*) In the case of registered land the transfer will follow Prec. VIIa, *supra*; there will be a separate deed by the purchaser declaring a trust to grant the underleases unless these are granted at the same time as the transfer is

THE FIRST SCHEDULE.

Particulars of Lot No. —— assigned to the Purchaser absolutely.

THE SECOND SCHEDULE.

Particulars of Lots assigned to the Purchaser upon trust to grant Underleases.

No. of Lot and Description.	Intended Underlessee.	Yearly Rent.

THE THIRD SCHEDULE.

The Form of Underlease above referred to.

(*As to this form, see the next Precedent.*)

No. XII.

UNDERLEASE *by the* PURCHASER *of* ONE *of* SEVERAL LOTS *held under* ONE LEASE, *where* ALL *the* LOTS *have been* ASSIGNED *to him* UPON TRUST *to grant* UNDERLEASES *of* PARTICULAR LOTS. (*Legal Estate.*)

THIS UNDERLEASE is made, &c., BETWEEN A. B. (*assignee of the head term in all the Lots*), of &c. (hereinafter called the Lessor, which expression shall, where the context so admits, include his executors, administrators and assigns), of the 1st part, C. D., of &c. (hereinafter called the Vendor), of the 2nd part, and E. F., of &c. (hereinafter called the Underlessee, which expression shall, where the context so admits, include his executors, administrators and assigns) of the 3rd part: WHEREAS: Parties.

(1) By a Lease dated the ——, and made between —— of the one part and —— of the other part, the property hereinafter described was (with other property) demised to the said —— for the term of —— years from the —— day of —— at the yearly rent of £—— and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained: Lease.

(2) After divers mesne assignments and acts in the law, ultimately under an Assignment dated the —— and made Mesne assignments.

executed. The application to register the purchaser as proprietor should be accompanied by applications to register the other purchasers as proprietors of the underleases unless the transaction is carried out at different times; in the latter case the other purchasers can protect themselves by lodging cautions.

between —— of the one part and the Vendor of the other part, the property became vested in the Vendor for the residue of the term granted by the recited Lease :

Agreement for sale.

(3) Upon a sale in Lots of the property comprised in the recited Lease the Vendor agreed to sell to the Underlessee the property hereinafter described at the price of £—— and it was part of the said agreement that the Vendor should assign to the Lessor the whole of the property comprised in the recited Lease for the residue of the terms thereby granted Upon trust as to part thereof (including the property hereinafter described) to grant Underleases to certain Purchasers (including the Underlessee) of particular Lots :

Assignment on trust to grant Underleases.

(4) By an Assignment (*d*) dated the —— and made between the Vendor of the one part and the Lessor of the other part, the property comprised in the recited Lease became and is now vested in the Lessor for the residue of the said term, and as regards the part thereof hereinafter described Upon trust at the request of the Vendor to demise the same to the Underlessee at the rent and subject to the covenants and conditions hereinafter reserved and contained :

NOW THIS DEED WITNESSETH as follows :—

Demise.

1. In pursuance of the said agreement and in consideration of the sum of £—— on or before (*e*) the execution of these presents paid by the Underlessee to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Lessor(*f*), at the request of the Vendor, hereby demises unto the Underlessee :

All that, &c. (*see Forms in Sec. II, p.* 471, *et seq.*).

To hold unto the Underlessee for the residue of the term granted by the recited Lease (except the last three days thereof)

Rent.

Yielding and paying during the said term the yearly rent of £—— by four equal quarterly payments on the usual quarter days in every year, the first payment to be made on the —— day of —— next.

Covenants, &c.

2. The Underlessee hereby covenants with the Lessor in manner following, that is to say :—

(i) That, &c. (*insert covenants and condition, see Precedents of Leases in Vol. III ; the covenants should correspond with those in the head Lease*).

(*d*) See last Precedent. (*e*) There will probably be a deposit in this case.

(*f*) This being a "demise at a rent," covenants for title cannot be implied under L. P. Act, 1925, s. 76 (5). The underlessee will have the benefit of the

The Underlessee will be entitled to a covenant by the Lessor in the following terms(*g*) :—

3. THE Lessor hereby covenants with the Underlessee that the Lessor or the person deriving title under him will, as respects the property comprised in the recited Lease and not hereby demised, henceforth from time to time duly pay all rent becoming due under the recited Lease and observe and perform all the covenants and conditions therein contained and henceforth on his part to be observed and performed. Covenant by Lessor to pay rent, &c., under the head Lease.

4. (*Add covenant for quiet enjoyment by Lessor, see Vol. III.*)

5. (*Add proviso for re-entry and other provisions as required.*)

IN WITNESS, &c.(*h*)

No. XIII.

ASSIGNMENT *of a* LEASEHOLD ESTATE *for* LIVES.(*i*) *Converted by L. P. Act*, 1925, *into a Term of Ninety years determinable by notice.* (*Legal Estate.*)

THIS ASSIGNMENT is made, &c. BETWEEN A. B., of, &c., (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part : WHEREAS— Parties.

(1) By a Lease dated the —— and made between G. H. of the one part, and the Vendor of the other part, ALL, &c. Recital of lease for lives.

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vendor's covenants in the assignment: *ib.*, s. 76 (6). The lessor will give the usual qualified covenant for quiet enjoyment. After 1925 a lessee or underlessee need not expressly covenant for his assigns: L. P. Act, 1925, s. 79 (1). Covenants for title on a "demise at a rent."

(*g*) See *Brown* v. *Paull* (1856), 2 Jur. N. S. 317; Dart. 7th ed., 192. It is sometimes provided by conditions of sale that this covenant by the lessor shall be restricted to the property ultimately retained by him. Covenants by lessees.

(*h*) A lease of registered land should be headed "H.M. Land Registry. Land Registration Act, 1925. District ——. Title No. ——. Property—." In other respects the lease may be in the same form as if the land were not registered, though the parcels should refer to the title number and be capable of being identified on the General Land Registry Map. Recitals should be avoided. Usual covenant by underlessor where title shown. Leases of registered land.

(*i*) Before 1926, an estate *pur autre vie* might be limited by the original grant, or by any subsequent assurance thereof, either to the grantee and his heirs, in which case on his death intestate the heir took as special occupant (subject, however, to the provisions of Part I of the L. T. Act, 1897), and the property became chargeable as assets by descent, as in the case of freehold land in fee simple; or to the grantee, his executors and administrators, in which case the executor or administrator took by special occupancy, or to the grantee without any words of limitation, in which case it went to the executor or administrator of the grantee by virtue of the Wills Act, 1837, s. 6, replacing 29 Chas. 2, c. 3, ss. 9 and 12, by abolishing general occupancy; an estate *pur autre vie* which passed to an executor or administrator by reason of special Creation of estates *pur autre vie*, old law. Special occupancy.

(*set out parcels as described in the Lease*), were granted by the said G. H. to the Vendor for the lives of X. and Y. (both of whom are still living), and the life of the survivor of them, at the yearly rent of £5, and subject to the covenants and conditions contained in the recited Lease, and on the part of the Lessee to be observed and performed:

Conversion into long term.

(2) By virtue of section one hundred and forty-nine of the Law of Property Act, 1925, the property comprised in the recited Lease became vested in the Vendor for a term of ninety years terminable by notice after the death of the survivor of the said X. and Y., both of whom are still living:

Agreement for sale.

(3) The Vendor has agreed to sell the said property to the Purchaser at the price of £—— for the residue of the said terminable term:

NOW THIS DEED WITNESSETH as follows:—

Assignment to Purchaser.

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser:

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occupancy, or otherwise, was made assets in his hands, to be applied in the same manner as the personal estate of the testator or intestate: *ib.* If an estate *pur autre vie*, either by the original grant or by any subsequent assurance thereof was limited to the grantee, his *heirs, executors and administrators*, the *heir* took as special occupant: *Atkinson* v. *Baker* (1791), 4 T. R. 229. See generally Theobald, 7th ed., 518, *et seq.*

Law after 1925.

By Ad. of E. Act, 1925, s. 45 (1) (*a*), all existing modes, rules and canons of descent, and of devolution by special occupancy or otherwise of real estate or a personal inheritance are abolished in the case of every person dying after 1925, and all interests in real estate and chattels real not ceasing on the death of the deceased devolve on his personal representatives: *ib.*, ss. 1 and 3. A limitation to a person "and his heirs" will have no meaning as words of limitation, though an heir can take beneficially by purchase: *ib.*, s. 51 (1); L. P. Act, 1925, ss. 131-2.

Conversion into long terms

Under L. P. Act, 1925, s. 149 (6), any lease or underlease "at a rent or in consideration of a fine" for life or lives or for any term of years determinable with life or lives or on the marriage of the lessee, or any contract therefor, whether made before or after 1925, takes effect as a lease, underlease or contract therefor, for a term of 90 years, terminable on the marriage of the lessee or on the dropping of the lives in question by one month's notice on either side on a quarter day; thus an estate for lives is converted into a term of years absolute and becomes a legal estate, while a contract to create an estate for lives becomes a contract to create a legal estate.

Effect as respects settlements.

The sub-section does not (para. (*a*) apply to an equitable term taking effect under a settlement or created out of an equitable interest under a settlement for mortgage or other like purposes; for there can be no objection to trustees behind the curtain, taking an interest during the lifetime of a beneficiary and holding it on discretionary or other trusts. Nor does the sub-section apply where the lease is not granted at a rent or in consideration of a fine; such a voluntary lease becomes an equitable interest: *ib.*, s. 1, 1st Sch., Pt. I.

ALL the property comprised in the recited Lease,

TO HOLD unto the Purchaser for the residue of the said term of ninety years terminable as aforesaid, subject to the rent, covenants, and conditions reserved by and contained in the recited Lease, and on the part of the lessee to be paid, observed, and performed.

2. THE covenant (C) mentioned in section seventy-seven of the Law of Property Act, 1925, shall be implied in these presents.

[3. *Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.(*j*)

No. XIV.

ASSIGNMENT *of* LEASEHOLDS, *formerly held for* LIVES *and* PERPETUALLY *renewable converted into a term of two thousand years.*(*k*) (*Legal Estate.*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the one part, and C. D., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) By a Lease dated, &c., 1921, and made between X. Y., (hereinafter called the Lessor) of the one part, and the Vendor Renewable lease.

(*j*) If the lease has been registered, the register will be rectified to show that the estate has been converted into a term of 90 years terminable with notice on either side. The instrument of transfer will be in the ordinary form, see Prec. No. VIIA, *supra*. Registered land.

(*k*) Perpetually renewable leases and underleases subsisting on 1st January, 1926, are converted into terms of 2,000 years or 2,000 years less by one day than the term out of which it is derived; the 2,000 years is calculated from the commencement of the original term: L. P. Act, 1922, 15th Sch., paras. 1 and 2; subject to a power for the lessee, with any requisite consents to determine the lease at the times at which it would have been renewable: *ib.*, para. 10 (1) (i); every assignment or devolution must be registered with the lessor within six months, and a registration fee of one guinea paid: *ib.*, para. 10 (1) (ii); the lessee must within one year from 1st January, 1926, produce the lease or underlease to the lessor and prove that the right of renewal was subsisting, this fact will be endorsed by the lessor: *ib.*, para. 10 (1) (iii); the right of re-entry will extend to breaches of the above obligations: *ib.* Lessees are only liable for rent and breaches of covenant during their period of ownership: *ib.*, para. 11. Additional rent is made payable in respect of the fines and other payments which would have been payable on the occasion of the first renewal after 1925: *ib.*, para. 12 (1), (5). The additional rent attributable to the loss of the right to forfeit for non-renewal on the dropping of a life is based on a percentage prescribed by the Minister under sub-s. 6, in other cases the practice hitherto adopted will be followed: *ib.*, para. 16 (3), unless the Minister otherwise directs. A statement of the arrangement made as to the amount and dates for payment of the additional rent, and the dates on which the lessee will have power to determine the lease Perpetually renewable leases. Production to lessor before 1927. Additional rent.

of the other part ALL THAT, &c. (*parcels*), were demised by the Lessor to the Vendor for a term of 99 years, from the —— day of ——, 1921, if F., G., and H., or any of them, should so long live, at a yearly rent of £20, and subject to the covenants and conditions therein contained and on the lessee's part to be observed and performed: AND the said Lease contained a covenant by the Lessor with the Vendor that if on the death of such one of them the said F., G., and H. (born respectively on the — on the —— and on the ——), as should first die, the Vendor, or the persons deriving title under him, should within six calendar months from the dropping of such life give to the Lessor or his heirs or assigns, or leave it at his or their usual or last-known place of abode, a notice in writing, requesting a new lease of the premises for 99 years, if such of them the said F., G., and H., as should be then living, and one other person (to be nominated for that purpose by the person giving or leaving such notice) or any of them, should so long live, and should within the said period pay the sum of £14 to the Lessor or his heirs or assigns, by way of fine, for the renewal of such Lease, then and in such case the Lessor or his heirs or assigns, would within such period as aforesaid, at the request and cost of the Vendor, or the persons deriving title under him, grant to him or them, on the surrender of the said Lease, a new Lease of the premises for a term of 99 years renewable on the dropping of a life as aforesaid according to such notice, upon the same terms and subject to the same covenants and provisions as were contained in the said Lease, including a corresponding covenant for renewal:

Endorsement on perpetually renewable lease.

(2) As appears from an endorsement (placed on the recited Lease) dated the —— day of —— 1926, and signed by the Lessor and the Vendor, it was admitted that on the 1st day of January, 1926, a perpetual right of renewal was in force under

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Endorsement.

Registration of title.

by notice will be endorsed on the lease and counterpart, and signed by the lessor and lessee under para. 14. The compensation (if any) to the lessor's solicitor will be payable out of the additional rent or the sum paid for commuting it: *ib.*, para. 15; disputes will be settled by the Minister of Agriculture: *ib.*, para. 16. Capital money subject to the trust can be applied in commuting the additional rent; any money so paid will be treated as capital: *ib.*, para. 17, see also S. L. Act, 1925 s. 73 (1) (ix); L. P. Act, 1925, s. 25; Ad. of E. Act, 1925, s. 39. If the title to the lease has been registered, the register will be rectified, to show the creation of the 2,000 years term: L. P. Act, 1922, 15th Sch., para. 19. The lease may be deposited at the Central Office and an office copy obtained: *ib.*, para. 20.

the recited Lease, and accordingly, that by virtue of the 15th Schedule to the Law of Property Act, 1922, the property comprised in the recited Lease became vested in the Vendor for a term of two thousand years from the said —— day of ——, 1921, and it was thereby agreed as follows:—

(i) That the additional yearly rent to be paid under the said Act in respect of the property (in lieu of the said fine and for loss of the right to re-enter for non-renewal and all other items of claim) should be the annual sum of £—— (making with the said rent of £20 the aggregate rent of £——):

(ii) That the said additional rent should be paid by equal instalments on the same quarter days as were applicable to the said rent of £20, and that the first instalment or the proper proportion thereof reckoned from 1st January, 1926, should be paid on the —— day of ——, 1926:

(iii) That the dates on which the Vendor or other the Lessee for the time being under the recited Lease should (by giving at least ten days' notice as provided by paragraph 11 of the 15th Schedule to the said Act) have power to determine the said term of two thousand years should be on the —— day of ——, 192—, and thereafter every fourteenth year on the said —— day of —— reckoned from the said —— day of ——, 192—:

Agreement for sale.

(3) The Vendor has agreed to sell the said property to the Purchaser at the price of £—— for the residue of the said term of two thousand years:

NOW THIS DEED WITNESSETH as follows:—

Assignment of leasehold premises.

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser:

ALL the property comprised in and demised by the recited Lease:

Habendum.

TO HOLD unto the Purchaser for the residue of the said term of two thousand years, determinable as aforesaid, subject to the said aggregate yearly rent of £——, and the covenants and conditions respectively contained in the recited Lease and implied under paragraph 10 of the 15th Schedule to the Law of Property Act, 1922, and on the lessee's part to be observed and performed.

Covenant to pay rent, &c.

2. THE Covenant (C) mentioned in section seventy-seven of the Law of Property Act, 1925, shall be implied in these presents.

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c. (*l*).

No. XV.

CONVEYANCE *of* FREEHOLDS, ENFRANCHISED COPYHOLDS, *and* LEASEHOLDS. (*Legal Estates.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (herein after called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:

Seisin of freeholds and enfranchised copyholds.

(1) The Vendor is seised (*m*) in fee simple in possession free from incumbrances of the property first hereinafter described, and is also seised of the property secondly hereinafter described (formerly copyhold of the Manor of —— in the County of ——), for an estate in fee simple in possession, subject to the terminable and variable rentcharge reserved under a Compensation Agreement dated, &c., but otherwise free from incumbrances the mining and sporting rights of the lord of the said manor having been acquired under the said Compensation Agreement:

Recital of lease.

(2) By a Lease dated the —— (*Form No.* 28, *Sec. I, p.* 468, *including mesne assignments, if required, but omitting Agreement for sale*):

Agreement for sale.

(3) The Vendor has agreed to sell the said freehold enfranchised and leasehold properties to the Purchaser subject as respects the property secondly hereinafter described, to the said compensation rentcharge (*n*) but otherwise free from incumbrances at the price of £——:

Registered land.

(*l*) If the title to the lease is registered, the register will be rectified to show that the proprietor has acquired a 2,000 years' term, what the aggregate rent is, the dates on which the proprietor has power to determine the term and that the covenants implied by para. 10 of the 15th Sch. to the L. P. Act, 1922, are incorporated in the registered lease, hence the instrument of transfer will be in the usual form, see Prec. VIIA, *supra.*

Registration with lessor.

Whether or not the land is registered the assignment must be registered with the lessor within six months: *ib.*, 15th Sch., para. 10 (1) (iii); for this purpose in the case of registered land either the transfer should be taken in duplicate, or the land certificate must be produced which under the rules satisfies the covenant.

(*m*) *Cf.* Form No. 1, Sec. I, p. 452.

Production to steward.

(*n*) After a compensation agreement has been executed it is no longer necessary to produce the conveyance to the steward under L. P. Act, 1922, s. 129, for the manorial incidents are extinguished by the agreement.

NOW in pursuance of the said agreement and in consideration of the sum of £——, on or before the execution of these presents paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) THIS DEED WITNESSETH as follows :—

Conveyance of freeholds and enfranchised land.

1. THE Vendor As Beneficial Owner hereby conveys into the Purchaser FIRST ALL that (*parcels of freeholds*): AND SECONDLY ALL that (*parcels of enfranchised land*) :

To HOLD unto the Purchaser in fee simple subject as respects the property secondly hereinbefore described, to the compensation rentcharge aforesaid.

Assignment of leaseholds.

2. THE Vendor As Beneficial Owner (*continue as in Precedent VII, p. 494, supra*).

Implied covenants.

3. THE Covenants (A) and (C) mentioned in section seventy-seven of the Law of Property Act, 1925, shall be implied in these presents.

Acknowledgment, &c., as to documents.

4. THE Vendor hereby acknowledges (*continue as in Form No. 4, Sec. III, p. 480 , supra*).

IN WITNESS, &c. [*Add schedules if required*].(*o*)

No. XVI.

SURRENDER *of a* LEASE.(*p*) VARIATION *where* SURRENDER *is taken under* L. P. ACT, 1925, s. 100. (*Merger of Legal Estate.*)

Parties.

THIS SURRENDER is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Lessee), of the one part, and C. D., of, &c. (hereinafter called the Freeholder), of the other part : WHEREAS :

Lease to which the surrender is supplemental.

(1) These presents are supplemental (*q*) to a Lease (hereinafter called the Principal Deed) dated the ——, and made between —— of the one part, and —— of the other part, whereby

(*o*) If the titles to any of the freeholds, enfranchised lands or leaseholds have been registered, the instrument of transfer will contain references to the title numbers. A conveyance of unregistered land can be included in an instrument of transfer, but in that case it must be taken in duplicate, one part to be left at the Land Registry, the other part to be retained by the purchaser. An alternative is to apportion the purchase-money and take a separate transfer confined to the registered land. In any case the transfer must show the purchase money attributable to the registered land.

Registered land conveyed with unregistered land.

(*p*) Surrenders, even of leasehold interests created by parol, must be by deed. Only where a surrender takes effect by operation of law (*e.g.*, if a new lease is granted to the lessee and he hands back his original lease), can the surrender take effect without a deed, see L. P. Act, 1925, ss. 52 to 55. The surrender will not prejudice underlessees : L. P. Act, 1925, s. 150 ; *Smith* v. *G. W. Ry. Co.* (1877), 3 A. C. 165 ; 47 L. J. Ch. 97 ; *Parker* v. *Jones* [1910], 2 K. B. 32 ; 79 L. J. K. B. 921.

Surrenders.

(*q*) See L. P. Act, 1925, s. 58.

ALL THOSE, &c. (*describe parcels as in the Lease*), were demised unto the said —— for the term of twenty-one years from the —— day of —— at the rent and subject to the lessee's covenants and the conditions by and in the Principal Deed reserved and contained:

Mesne assignments, &c.

(2) After divers mesne assignments and acts in the law ultimately under an Assignment dated, &c., and made, &c., the property demised by the Principal Deed became and is now vested in the Lessee for the residue of the term granted by the Principal Deed:

[*Add recital of mortgage of the freehold reversion if the surrender is taken under L. P. Act*, 1925, *s.* 100. *If the surrender is accepted by a mortgagee in possession, then "Mortgagee" should be substituted for "Freeholder" throughout.*]

That freehold reversion is vested in Freeholder free from incumbrances

(3) The freehold reversion immediately expectant upon the term granted by the Principal Deed is now vested in the Freeholder in fee simple in possession [subject to the recited Mortgage but otherwise] free from incumbrances:(*r*)

[*or* The Mortgagee is by virtue of section one hundred of the Law of Property Act, 1925, entitled to accept a surrender of the term created by the Principal Deed:]

Agreement to surrender.

(4) The Lessee has agreed to surrender the said term to the Freeholder in consideration of the sum of £——:

[*or* The Lessee has with a view to the granting of a new lease under the powers conferred by section ninety-nine of the Law of Property Act, 1925, [as extended by the mortgage deed] agreed to execute such surrender as is hereinafter contained]:

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Lessee to the Freeholder

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Surrenders to Mortgagors.

(*r*) If the lessor's property was incumbered the surrender had before 1926 to be made to the legal mortgagee: *Robbins* v. *Whyte* [1906], 1 K. B. 125; 75 L. J. K. B. 38; unless the case came within s. 3 of the Conv. Act, 1911, replaced by L. P. Act, 1925, s. 100. After 1925 the mortgagor will have the legal estate, while the mortgagees will have either mortgage terms or legal charges, placing them in the same position. Thus a mortgagor cannot accept a surrender which will be binding on the mortgagees without their concurrence unless the case comes within s. 100. Where the surrender is taken under this section no consideration must be paid by the lessee to the mortgagor, and the new lease must take effect in possession within one month from the date of the surrender, and otherwise comply with the provisions of that section.

Release of covenant, implied.

A restrictive covenant may be released by reason of the surrender of an old lease and the grant of a new one if the lessor has no notice of a restrictive covenant affecting the lessee under the original lease: *Wilkes* v. *Spooner* [1911], 2 K. B. 473; 80 L. J. K. B. 1107.

(the receipt, &c.), [*or* in consideration of the premises] the Lessee, As Beneficial Owner, hereby surrenders and assigns unto the Freeholder:

ALL the premises comprised in and demised by the Principal Deed TO THE INTENT that the term granted by the Principal Deed shall forthwith merge and be extinguished in the fee simple of the property (*s*) [*or* in the leasehold reversion expectant thereon].

2. PROVIDED ALWAYS (*Form No.* 1, *Sec. III*, *p.* 478, *supra*). IN WITNESS, &c.(*t*)

Proviso cutting down the implied statutory covenants for title.

GROUP B.—CONVEYANCES ON SALES BY ABSOLUTE OWNERS WITH THE CONCURRENCE OF INCUMBRANCERS.

No. I.

CONVEYANCE *of* FREEHOLDS *by a* MORTGAGOR (*the* MORTGAGEES CONCURRING), *where* PART *of the* PURCHASE-MONEY *is paid to the* MORTGAGEES *in satisfaction of their debt.* VARIATIONS *where the* MORTGAGEES *release* PART *of their* SECURITY *without being Paid off.* (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of &c. (hereinafter called the Vendor), of the 2nd part, and G. H., of &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS—

Parties.

(1) By a Mortgage dated the ——, and made between the

(*s*) A surrender with a view to the grant of a new lease *prima facie* includes fixtures, and the tenant will lose his right to remove them unless he expressly stipulates to the contrary: *Pole Carew* v. *Western Counties, &c.* [1920], 2 Ch. 97; 89 L. J. Ch. 559; as to the tenant's right to fixtures in the case of agricultural holdings, see Agricultural Holdings Act, 1923, s. 22; see also Woodfall's Landlord and Tenant, 21st ed., 795. Hence, where the right of removal is to be kept on foot the following clause may be added:—

Fixtures on a surrender.

3. PROVIDED ALWAYS, that these presents shall not prejudice or affect any rights to which the Lessee was entitled immediately before the execution of these presents as respects the removal of fixtures.

(*t*) If the title to the lease is registered, the surrender should be headed—"H.M. Land Registry—Land Registration Act, 1925—District—Title No.—Property—" and the parcels should refer to the registered lease. Where there is an express declaration of merger there is no need to register the assignee, but an application must be made to the Registrar, to close the registered title. A lease will not be registered unless the term granted was for more than 21 years.

Surrender of lease of registered land.

The mortgage, agreement for sale and for the Mortgagees to concur, state of mortgage debt.

Vendor of the one part, and the Mortgagees of the other part (*Form No.* 2, *Sec. I, p.* 452, *down to the end. The necessary variations appear in the Form*):

Payment of part of the purchase-money to the Mortgagees.

Payment of the remainder of the purchase-money to the Vendor.

NOW in pursuance of the said agreement and in consideration of the sum [of £—— paid by the Purchaser to the Mortgagees (*a*) by the direction of the Vendor (the receipt of which sum the Mortgagees hereby acknowledge), and of the further sum] of £—— paid by the Purchaser to the Vendor [with the consent of the Mortgagees (*b*)] (the receipt of which sum of £—— (*c*) [and the payment of the aforesaid sum of £——,(*d*) making together the said purchase-money of £——], the Vendor hereby [respectively] acknowledges) THIS DEED WITNESSETH as follows:—

Conveyance by Mortgagees and Vendor.

1. THE Mortgagees, As Mortgagees, and according to their term (*e*) and by the direction of the Vendor, hereby surrender

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(*a*) Where the mortgagees are merely releasing without receiving anything and there is a recital "that they are satisfied with the security which will remain," the words referring to payment to them will be omitted. Formerly trustees could, independently of an express power, release part of their security only on receipt of the whole proceeds of the sale attributable to that security: *Re Morrell and Chapman* [1915], 1 Ch. 162; 84 L. J. Ch. 191. After 1925 trustees for sale: L. P. Act, 1925, s. 28; and personal representatives: Ad. of E. Act, 1925, s. 39, have all the statutory powers of a tenant for life. Under S. L. Act, 1925, s. 69, a tenant for life has power, with the consent of the incumbrancer, to shift the incumbrance; and under s. 70 has power, with the like consent, to vary the provisions of the mortgage. As to the invalidity of an assignment of the benefit of a covenant to indemnify the mortgagor against breaches of the mortgage covenants, see *Rendall* v. *Morphew*, 84 L. J. Ch. 517.

Variation of the security

(*b*) These words will be required where the mortgagees are releasing part of their security.

(*c*) The amount paid to the vendor.

(*d*) The amount, if any, paid to the mortgagees.

Implied covenants for title.

(*e*) This Precedent implies a several covenant by the mortgagees that they have not incumbered or done any act to prevent them from conveying, &c.: L. P. Act, 1925, s. 76 (1) (*f*). This being a covenant by "every person," the word "person" does not admit of being read in the plural, and the covenant is, moreover, expressly confined to the person's own acts. So that making two persons jointly convey "as mortgagees" or "as trustees" has not, as in other cases, the effect of a joint covenant.

The Precedent also implies a covenant for title by the vendor that, notwithstanding anything by him or the mortgagees or any one through whom he derives title otherwise than by purchase for value, &c., he and the mortgagees can convey, &c.: s. 76 (1) (*a*).

Mortgagee or trustee conveys only according to his estate or term except on selling.

A mortgagee or trustee, except where he is selling, conveys by reference to his mortgage or trust deed. If he conveys by substantive description it is usual to add the words "according to his term."

"Convey" is used in this and other Precedents, but it is not a necessary word; nor is the word "grant": L. P. Act, 1925, s. 51 (2).

and release and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser,

ALL THAT, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple discharged from all principal money and interest secured by and from all claims under the recited mortgage, and to the intent that [as respects the premises hereby conveyed] the said mortgage term shall merge. Habendum.

[2. *Add acknowledgment for production of documents by mortgagees, Form No.* 4, *Sec. III, p.* 480, *if required*, (*f*) *also, if part of the debt is to remain, covenant by Vendor, see Form No.* 5, *Sect. III, p.* 480.] Documents.

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*] Certificate.

IN WITNESS, &c.(*g*)

No. I(A).

TRANSFER *of* REGISTERED FREEHOLDS *on sale, a* CHARGEE *or the registered proprietor of an incumbrance created before the date of first registration concurring.*

H.M. Land Registry.

Land Registration Act, 1925.

District ——
Title No. ——
Property ——

(*Date.*) In consideration of —— pounds (£——) paid to A. B., of &c. (*the proprietor of the land*) and of —— pounds (£——) paid to C. D., of &c. (*the proprietor of the charge or incumbrance*) (the receipt of which sums the said A. B. and C. D. hereby respectively acknowledge), the said A. B., As Beneficial Owner, hereby transfers to E. F., of &c., the land comprised in the title above referred to, And the said C. D., As Mortgagee, hereby discharges the same land from the charge dated (*date*) registered

(*f*) If the mortgagees are releasing part of their security they will retain the documents of title and give the acknowledgment. A mortgagee or trustee should not give an undertaking for safe custody, see Dart, 7th ed., 578. As to the rights of a purchaser in respect of documents retained by a mortgagee, see General Conditions of 1925, cl. 34.

(*g*) If the land is registered, the mortgage being made before the date of first registration, and the mortgagee is not registered as the proprietor of it, the above form would probably be accepted by the Registrar in lieu of the prescribed form of transfer. The draft should be submitted to him for approval, together with the evidence of title to the mortgage. Registered land.

(*date*) (*or* incumbrance prior to registration dated (*date*)) of which he is the registered proprietor and from all liability in respect thereof.

[*Add Form No.* 8, *Sec. III*, *p.* 483, *if required.*]

Signed Sealed and Delivered by the said A. B. in the presence of ——

Signed Sealed and Delivered by the said C. D. in the presence of ——

NOTE.—*If there are two or more separate sets of chargees refer to the sums paid to each set, and in the discharge refer to the charges which are to be discharged.*

No. II.

CONVEYANCE *of* FREEHOLDS *by a* MORTGAGOR (*the* MORTGAGEES CONCURRING), *where the* MORTGAGE DEBT *is kept on foot as a protection against* MESNE INCUMBRANCES.(*h*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of, &c. (hereinafter called the Vendor), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS—

Recital of the mortgage agreement for sale and for the Mortgagees to concur.

(1) By a Mortgage dated the ——, and made between the Vendor of the one part and the Mortgagee of the other part (*Form No.* 2, *Sec. I*, *p.* 452, *supra, down to the end*) :(*i*)

Agreement to keep mortgage debt on foot.

(5) Upon the treaty for the said purchase it was agreed that the said mortgage debt should be kept on foot as a protection to the Purchaser against subsequent incumbrances (if any) in manner hereinafter appearing:(*j*)

When title should be made by first mortgagees.

(*h*) It is not usual or desirable to keep the mortgage debt on foot unless the purchaser has reason to suspect the existence of a subsequent incumbrance, for this procedure complicates the title. If the purchaser has notice of a subsequent incumbrance it is desirable that the first mortgagees should make title under their power of sale. The mortgage term cannot be kept on foot: L. P. Act, 1925, s. 116.

(*i*) The mortgagee will, of course, receive the whole of his mortgage debt.

Mortgage debt may be kept on foot as protection by simple declaration.

(*j*) In *Toulmin* v. *Steere* (1817), 3 Mer. 210, land subject to two incumbrances was sold by the owner and conveyed by him to the purchaser with the concurrence of the first mortgagee; the first mortgage was paid off out of the purchase-money. The purchaser had through his agent constructive notice of the second incumbrance. It was held that the purchaser could not set up the first mortgage, which he had paid off, against the second incumbrance; and see *Re Connolly Bros.* [1912], 2 Ch. 25; 81 L. J. Ch. 517; and

NOW (*continue as in Prec. I of this Group down to "respectively acknowledges"*) THIS DEED WITNESSETH as follows :—

Assignment of mortgage debt.

1. THE Mortgagees, As Mortgagees and by the direction of the Vendor, hereby assign unto the Purchaser

ALL THAT the principal sum of £—— secured by the recited Mortgage and the interest to become due thereon,

Mortgage debt to remain on foot.

TO HAVE AND RECEIVE the same unto the Purchaser absolutely, TO THE INTENT that the said principal sum and interest shall be deemed to be a subsisting charge on the property hereinafter described as a protection to the Purchaser and the persons deriving title under him against subsequent incumbrances (if any), but for no other purpose.

Conveyance of the land.

2. THE Mortgagees, As Mortgagees and according to their term and by the direction of the Vendor, hereby surrender and release, and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser,

ALL THAT, &c. (*see Forms in Sec. II, p.* 471, *et seq.*).

TO HOLD unto the Purchaser in fee simple.

Documents.

[3. *Add acknowledgment and undertaking as regards any documents retained by the Vendor, Form No.* 4, *Sec. III, p.* 480.]

Certificate.

[4. *Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

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article in L. Q. R., October, 1912. It has been decided that the doctrine laid down in *Toulmin* v. *Steere* applies only where there is no contemporaneous expression of intention to the contrary, and that a simple statement in the conveyance of such an intention is sufficient to keep alive the prior mortgage debt as against a subsequent incumbrance, if any. Even where there is no expressed intention to keep the charge alive, such an intention will be presumed. where it is for the evident benefit of the owner of the estate. As to what will create a sufficient presumption of intention, see Dart, 7th ed., 952 ; *Re Gibbon* [1909], 1 Ch. 367 ; 78 L. J. Ch. 264 ; *Butler* v. *Rice* [1910], 2 Ch. 277 ; *Whiteley* v. *Delaney* [1914], A. C. 132 ; 82 L. J. Ch. 349 ; as respects limited owners : L. P. Act, 1925, s. 116. As respects mortgages made or transferred after 1925 it will not be necessary to keep alive the debt of the first mortgagee having the deeds, for unless the puisne mortgages are protected by registration (L. C. Act, 1925, s. 10, Class C. (i)) the puisne mortgages can be ignored : *ib.*, s. 13 (2). A puisne mortgage made before 1925 can, even before transfer, be registered as a land charge : *ib.*, s. 10 (6). The reason is that though converted into a legal mortgage a purchaser without notice thereof will take free therefrom : L. P. Act, 1925, 1st Sch., Pt. VII, para. 6, Pt. VIII, para. 5. Registration operates as notice : L. P. Act, 1925, ss. 197-8. As to the priority of puisne mortgages, legal or equitable, made after 1925 see *ib.*, s. 97.

Puisne mortgages.

In the case of land registered with absolute or good leasehold title it is not necessary to keep alive a registered charge, for the register shows what incumbrances are material.

No. III.

CONVEYANCE *of* TWO FREEHOLD PROPERTIES *by a* MORTGAGOR *where the* MORTGAGEES *of each* ESTATE CONCUR *and are paid off.* (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of &c., and C. D., of, &c. (hereinafter called the X. Mortgagees),(*k*) of the 1st part, E. F., of, &c., and G. H., of, &c. (hereinafter called the Y. Mortgagees), of the 2nd part, K. L., of, &c. (hereinafter called the Vendor), of the 3rd part, and M. N., of, &c. (hereinafter called the Purchaser), of the 4th part: WHEREAS:—

Mortgage of X. Estate.

(1) By a Mortgage (hereinafter called the X. Mortgage) dated the ——, and made between the Vendor of the one part, and the X. Mortgagees of the other part, the Vendor, being then seised in fee simple in possession free from incumbrances, conveyed the property first hereinafter described to the X. Mortgagees in fee simple by way of mortgage for securing payment to them of the principal sum of £——, with interest thereon as therein mentioned:

Mortgage of Y. Estate.

(2) By a Mortgage (hereinafter called the Y. Mortgage), dated the ——, and made between the Vendor of the one part, and the Y. Mortgagees of the other part, the Vendor, being then seised in fee simple in possession free from incumbrances, conveyed the property secondly hereinafter described to the Y. Mortgagees in fee simple by way of mortgage for securing the payment to them of the principal sum of £——, with interest thereon as therein mentioned:

Statutory mortgage terms.

(3) By virtue of the Law of Property Act, 1925, 1st Schedule, Part VII, the property first hereinafter described became vested in the X. Mortgagees for a term of three thousand years without impeachment of waste, subject to cesser on redemption under the X. mortgage, and the property secondly hereinafter described became vested in the Y. Mortgagees for a similar term subject to cesser on redemption under the Y. mortgage:

Agreement for sale.

(4) The Vendor has agreed to sell to the Purchaser the property first and secondly hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——.

Agreement by Mortgagees to concur and state of mortgage debts.

(5) The said principal sums of £—— and £—— are still owing to the X. and Y. Mortgagees respectively upon the security of the X. and Y. Mortgages, all interest thereon having been

Numerous Mortgages.

(*k*) Where there are a large number of mortgages of different parts of the property the conveyance can be simplified by means of a schedule setting out in different parts the material facts relating to each mortgage.

paid, as they hereby respectively acknowledge, and they have agreed upon receiving the sums so due to them to join in this conveyance in manner hereinafter appearing.

Payment of purchase-money.

NOW in pursuance of the said agreement and in consideration of the sum of £—— paid to the X. Mortgagees and of the sum of £—— paid to the Y. Mortgagees, by the Purchaser by the direction of the Vendor (the receipt of which sums the X. and Y. Mortgagees hereby respectively acknowledge) and of the sum of £—— paid to the Vendor by the Purchaser (the receipt of which sum of £—— and the payment of which sums of £—— and £——, making together the said purchase-money of £——, the Vendor hereby acknowledges) THIS DEED WITNESSETH as follows :—

Conveyance of X. and Y. Estates.

1. THE X. Mortgagees for the purpose (*l*) of releasing the property first hereinafter described from their said mortgage debt of £—— by the direction of the Vendor and according to their term, As Mortgagees, hereby surrender and release, and the Y. Mortgagees, for the purpose of releasing the property secondly hereinafter described from their said mortgage debt of £—— by the direction of the Vendor and according to their term, As Mortgagees, hereby surrender and release, and the Vendor as to all the property hereinafter described, As Beneficial Owner, hereby conveys and confirms unto the Purchaser,

FIRST, ALL THOSE (*description of X. Estate*),

AND, SECONDLY, ALL THOSE (*description of Y. Estate*),

Discharged from the mortgage debts.

TO HOLD unto the Purchaser in fee simple discharged from all principal money and interest secured by and from all claims under the X. and Y. Mortgages, or either of them and to the intent that the said mortgage terms shall merge so far as respects the premises hereby conveyed.

Documents.

[2. *Add, if required, acknowledgment and undertaking by Vendor as to documents retained by him, Form No.* 4, *Sec. III, p.* 480.]

Certificate.

[3. *Also, if required, Form No.* 8, *Sec. III, p.* 483.]

IN WITNESS, &c.(*m*)

(*l*) Where a person joins in a deed for a particular purpose he will not, in the absence of a clear intention to do so, be regarded as having joined for other purposes : *Re Horsfall* [1911], 2 Ch. 63 ; 80 L. J. Ch. 480.

Releases by trustee mortgagees.

As to the release of part of their security by trustee mortgagees, see *Re Morrell and Chapman* [1915], 1 Ch. 162 ; 84 L. J. Ch. 191 ; L. P. Act, 1925, s. 113 ; also S. L. Act, 1925, ss. 69-70.

Variations for registered land.

(*m*) If both properties are registered and both mortgages are by registered charge or incumbrance whereof a proprietor is registered, the document will consist merely of an adaptation of the prescribed Form No. 55 of transfer and discharge ; no recitals are required. But if either property is unregistered

No. IV.

CONVEYANCE *of* FREEHOLDS *by a* MORTGAGOR *where* FIRST *and* SECOND LEGAL CHARGEES CONCUR *and are paid off.* (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the First Mortgagees), of the 1st part, E. F., of, &c., and G. H., of, &c. (hereinafter called the Second Mortgagees), of the 2nd part, K. L., of, &c. (hereinafter called the Vendor), of the 3rd part, and M. N., of, &c. (hereinafter called the Purchaser), of the 4th part: WHEREAS:—

First Legal Charge.

(1) By a Legal Charge (hereinafter called the First Mortgage) dated, &c., and made between the Vendor of the one part and R. T., of the other part, the Vendor, by way of legal mortgage (*n*) charged the property hereinafter described with the payment to the said R. T. of the principal sum of £—— and interest thereon as therein mentioned:

Transfer of first charge.

(2) By a Transfer, dated, &c., and made between the said R. T. of the one part and the First Mortgagees of the other part, in consideration of the payment of the said sum of £—— and the current interest thereon, the said R. T. conveyed and transferred to the First Mortgagees the benefit (*o*) of the First Mortgage:

Second Legal Charge.

(3) By a Legal Charge (hereinafter called the Second Mortgage) dated, &c. (duly registered as a land charge), and made between the Vendor of the one part and the Second Mortgagees of the other part, the Vendor by way of legal mortgage charged (but subject to the First Mortgage) the property hereinafter described with the payment to the Second Mortgagees of the principal sum of £—— and interest thereon as therein mentioned:

Agreement for sale.

(4) The Vendor has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Agreement by Mortgagees to concur.

(5) The said principal sums of £—— and £—— are still owing to the First and Second Mortgagees respectively upon the security of the First and Second Mortgages, all interest

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or if either mortgage has no registered proprietor, it will probably be best to have two documents, one for each estate: the unregistered property following the above precedent, the registered property, Form No. 55.

(*n*) As to charges by way of legal mortgage, see L. P. Act, 1925, s. 87, 5th Sch., Form No. 1.

(*o*) As to transfers of mortgages of land: *ib.*, s. 114, 3rd Sch., Form No. 1.

thereon having been paid as they hereby acknowledge, and they have agreed, upon receiving the sums so due to them, to join in this conveyance in manner hereinafter appearing:

Witnessing part.

NOW in pursuance of the agreement and in consideration of the sum of £—— now paid to the First Mortgagees and of the sum of £—— now paid to the Second Mortgagees in each case by the Purchaser by the direction of the Vendor (the receipt of which sums the First and Second Mortgagees hereby respectively acknowledge) and of the sum of £—— now paid to the Vendor by the Purchaser (the receipt of which sum of £—— (*p*) and the payment of which sums of £—— (*q*) and £—— (*q*), the Vendor hereby acknowledges) THIS DEED WITNESSETH as follows:—

Release and Conveyance.

1. THE First Mortgagees, by the direction of the Vendor, As Mortgagees, hereby release, and the Second Mortgagees, by the direction of the Vendor, As Mortgagees, hereby release, and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser:

Parcels.

ALL THAT, &c. (*see Forms in Sec. II, pp.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple, discharged from all principal money and interest secured by and all claims under the First and Second Mortgages, or either of them.

Documents.

[2. *Add, if required, acknowledgment and undertaking by the Vendor, Form No.* 4, *Sec. III, p.* 480.]

Certificate.

[3. *And Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.(*r*)

No. V.

CONVEYANCE *by a* MORTGAGOR *with the* CONCURRENCE *of* MORTGAGEES *of a* PORTIONS TERM.(*s*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of &c., (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and

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(*p*) The amount paid to the vendor.

(*q*) The amounts paid to the mortgagees.

Registered land.

(*r*) If the land is registered and both mortgages are by registered charge or incumbrance whereof a proprietor is registered, the document will follow the prescribed Form No. 55 of transfer and discharge. If either of the mortgages is without a registered proprietor it will probably be best to use the above form and to have the draft approved by the Registrar as a transfer and discharge. The title to the unregistered charge would have to be proved to the Registrar in order to obtain this.

Portions, terms and family charges.

(*s*) A portions term will now be rarely used for mortgage purposes, for it will take effect in equity if created before 1925: S. L. Act, 1925, 2nd Sch., para. 1 (6); if created after 1925 it must be limited by the trust instrument

E. F., of, &c. (hereinafter called the Mortgagees), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Settlement made before 1926 creating term for securing portions.

(1) By a Deed (hereinafter called the Settlement) dated the —— day of ——, and made between John B. of the 1st part, Jane R. of the 2nd part, and X. and Y. of the 3rd part (being a settlement made in consideration of the marriage shortly afterwards solemnised between the said John B. and Jane R.), the property hereinafter described was (with other property) limited To the use of the said John B. during his life, with remainder To the use that the said Jane R. should if she survived him have a jointure rentcharge (which failed) and subject thereto To the use of the parties thereto of the 3rd part for a term of 500 years, from the death of the said John B. without impeachment of

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and can only be created by a trust: *ib.*, s. 4; even if a legal term is expressed to be created for family purposes independently of a trust deed it will create a settlement: *ib.* s., 1 (1) (v), and will be over-reachable as one of the limitations of the settlement: *ib.*, s. 72 (2). The money required to discharge the portions will either be paid out of capital money or investments in hand: *ib.*, s. 73 (1) (ii); or will be raised by the tenant for life under s. 71 (1) (i). It is only where the tenant for life cannot be found or capriciously refuses to direct the portions to be paid off out of capital money or to raise the requisite money under s. 71, that resort is had, as in the text, first to a mortgage of the equitable term, protected by the registration of a *lis pendens* under L. C. Act, 1925, s. 2, followed either by a conveyance by the estate owner or a vesting order under S. L. Act, 1925, s. 16, for the restrictions in s. 17, do not prevent the tenant for life from giving legal effect to an equitable interest which ought to have priority over the settlement. The case in the text is given to show how in the last resort equitable interests can be enforced; as a general rule they will not be brought on the title to the legal estate.

Enforcement of equitable interests.

Mortgage subject to a jointress.

If the jointress had survived then S. L. Act, 1925, s. 16 (1), proviso would have applied. The mortgagees would refuse to advance money on a legal mortgage term subject to an equitable jointure, for if the jointress was alive when they came to sell the purchaser would generally be able to refuse the title, for he could not convey the land acquired till a vesting instrument had been executed naming S. L. Act trustees: S. L. Act, 1925, ss. 1 (1) (v), 13.

Rights of purchasers as respects equitable interests.

Title must be made under S. L. Act where land is settled.

A purchaser can refuse to accept a title made by bringing on equitable interests when title can be made without doing so: L. P. Act, 1925, s. 42. Thus title should not be made by appointing an equitable interest to a purchaser and then requiring legal effect to be given thereto under L. P. Act, 1925, s. 3, or S. L. Act, 1925, s. 16, if title can be made by trustees for sale or by a person having the powers of a tenant for life. The proper course is to appoint the proceeds of sale after the sale is completed. The same remark applies to a tenant in tail, until he has disentailed and the trustees have executed a deed of discharge under S. L. Act, 1925, s. 17, which they will not do so long as any other equitable interest affects the settled land; he must make title as a person having the statutory powers of a tenant for life. Where the charge consists of a rentcharge the donee has power to limit a term himself: L. P. Act, 1925, s. 121. Hence it is unnecessary to limit a term by the settlement for the purpose of securing it

waste, upon trusts for raising by mortgage or otherwise, as the portion or portions of any child or children of the then intended marriage, who should attain the age of twenty-one years, or in the case of daughters marry (other than a first or only son as therein mentioned), if (as happened) there should be three or more such children, the sum of £20,000 with interest thereon as therein mentioned, AND subject to the said term and the trusts thereof, To the use of the first and other sons of the said marriage successively according to seniority in tail male, with divers remainders over : AND by the Settlement the said X. and Y. were appointed to be the trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890 :

Deaths of husband and wife and as to issue of the marriage.

(2) The said Jane R., then Jane B., died on the —— day of ——, and the said John B. died on the —— day of —— 1926 before any vesting Deed had been made in his favour, having had issue by his said wife five children and no more, namely, an eldest son, the Vendor, who was born on the —— day of ——, and four other children all of whom had, at the date of the mortgage hereinafter mentioned, attained the age of twenty-one years :

Probate by the S.L. Act trustees.

(3) On the —— day of —— probate was granted by the Principal Probate Registry, to the will dated —— of the said John B. to the said X. and Y. limited to the settled land (*t*), comprised in the Settlement :

Vesting assent.

(4) By a Vesting Assent (*u*) dated —— the said X. and Y. assented to the property hereinafter described (with other property) vesting in the Vendor in fee simple, upon the trusts affecting the same under the Settlement, and declared that they were the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Vendor abroad.

(5) At the date of the mortgage and vesting order hereinafter mentioned the Vendor was abroad and his whereabouts were unknown :

Devolution on death of tenant for life.

(*t*) See Ad. of E. Act, 1925, s. 22. Though no vesting deed was executed under S. L. Act, 1925, 2nd Sch., para. 1, the legal estate in the settled land passed to the former tenant for life before his death : L. P. Act, 1925, 1st Sch., Pt. II ; but no tenant for life or tenant in tail can exercise his powers till a vesting instrument is executed : S. L. Act, 1925, s. 13.

Duration of settlements.

(*u*) The portions term was still on foot hence the settlement would have been subsisting if the vendor had previously disentailed : S. L. Act, 1925, s. 3. A disentailing assurance does not affect the statutory powers if any charge remains on foot : *ib.*, s. 20 (1) (ix). A disentailing assurance need not be enrolled : L. P. Act, 1925, s. 133. For a form of Vesting Assent, see S. L. Act, 1925, 1st Sch., Form No. 5.

Equitable Mortgage by Trustees of the portion term.

(6) By a Deed (hereinafter called the Mortgage) dated the —— day of ——, and made between the said X. & Y. of the one part, and the Mortgagees of the other part, the property hereinafter described (with other property) was demised by the said X. & Y. for the residue of the said term of 500 years, less three days, without impeachment of waste, unto the Mortgagees, subject to cesser on payment by the persons for the time being entitled to the said property in reversion expectant upon the said term of the sum of £20,085 (being the sum charged in respect of the said portions and the costs of raising the same), with interest thereon as therein mentioned:

Vesting order.

(7) By an Order of the Chancery Division, made on the —— day of ——, In the Matter of the Settlement, And in the Matter of the Settled Land Act, 1925, the Court ordered that the property comprised in the Mortgage should vest in the Mortgagees for a legal term, without impeachment of waste, equal in duration to the equitable term demised by the Mortgage and subject to cesser on redemption as provided by the Mortgage:

Land charge, for want of title deeds.

(8) On the —— day of —— the Mortgagees registered a land charge against the name of the Vendor in respect of the puisne mortgage created by virtue of the Mortgage and recited Order [or, *in the case of registered land*, notice of the puisne mortgage created by virtue of the Mortgage and recited Order was entered on the register]:

Disentailing Assurance.

(9) By a Disentailing Assurance dated, &c., and made between the Vendor of the one part, and the said X. & Y. of the other part, the Vendor conveyed his equitable interest (*v*) in the property for the time being subject to the trusts of the Settlement to the said X. & Y. in fee simple or absolutely discharged from all interests in tail male or tail of the Vendor and from all the limitations or trusts, to take effect after the determination or in defeasance of such interests and so discharged, In trust for the Vendor in fee simple or absolutely:

Discharge by S. L. Act trustees.

(10) By a Deed of Discharge dated, &c., and made between the said X. & Y. of the one part, and the Vendor of the other part pursuant to section seventeen of the Settled Land Act, 1925, the said X. & Y. thereby declared that they were discharged from the trust so far as regarded the land affected by the recited Vesting Assent:

Disentailing Assurances pass equities only.

(*v*) The disentailing assurance could not pass the vendor's legal estate: S. L. Act, 1925, s. 18 (1) (*a*), see also s. 13.

(11) The Vendor has agreed to sell the property hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £2,500 : Agreement for sale.

(12) The sum of £15,500, and no more, is now owing on the security of the Mortgage and recited Vesting Order with the current half-year's interest thereon, and the Mortgagees have at the request of the Vendor agreed on receiving the sum of £500 in part satisfaction of the said mortgage debt to join in these presents in manner hereinafter appearing : Amount of mortgage debt and agreement by Mortgagees to concur on part payment.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £500 now paid by the Purchaser by the direction of the Vendor to the Mortgagees (the receipt of which sum the Mortgagees hereby acknowledge), and of the sum of £2,000 now paid by the Purchaser with the consent of the Mortgagees to the Vendor (the payment and receipt of which sums of £500 and £2,000, making together the aggregate purchase-money of £2,500, the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys and the Mortgagees, As Mortgagees, and according to their term or interest and by the direction of the Vendor, hereby surrender and assign unto the Purchaser, Conveyance by Vendor and surrender by Mortgagees.

All, &c. (*parcels, see Forms in Sec. II, p.* 471, *et seq.*), Parcels.

To hold unto the Purchaser in fee simple discharged from all money secured by and from all claims under the Mortgage and recited Vesting Order, and To the intent—First that the term of 500 years, less three days, created by the Mortgage and recited Order may, as regards the property hereby conveyed, merge and be extinguished in the fee simple thereof, And Secondly, that these presents shall be a sufficient authority to the Registrar to cancel the recited Land Charge [*or in the case of registered land to* cancel the notice of the recited puisne mortgage] so far as the same relates to the property hereby conveyed. Habendum discharged from the term and mortgage.

2. The Vendor hereby acknowledges the right of the Purchaser to production of the recited Settlement, Vesting Assent, Disentailing Assurance and Deed of Discharge, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. Acknowledgment and undertaking as to documents.

3. The Mortgagees hereby acknowledge the right of the Purchaser to production of the Mortgage and to delivery of copies thereof.

In witness, &c.(*w*)

(*w*) As a rule the settlement and disentailing assurance are not material, but in the above Precedent the equitable interests were brought on the title by Documents affecting the title.

No. VI.

CONVEYANCE *of* FREEHOLDS *with the* CONCURRENCE *of the* OWNER *of a* LEGAL RENTCHARGE. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (hereinafter called the Rentchargee), of the 2nd part, and E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS—

Conveyance to Vendor, reserving a rentcharge.

(1) By a Conveyance dated, &c., and made, &c., the property hereinafter described was conveyed (with other property which remains vested in the Vendor), to the Vendor in fee simple subject to the reservation (*x*) thereout of a perpetual yearly rentcharge of £15 to the Rentchargee:

Agreement for sale.

(2) The Vendor has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Annuitant agrees to release.

(3) The Rentchargee, being satisfied that the other property comprised in the recited Conveyance will be a sufficient security for the said rentcharge, has agreed to join in these presents in manner hereinafter appearing:

NOW THIS DEED WITNESSETH as follows:—

Conveyance of land and release of rentcharge.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, and with the approval of the

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reason of the tenant in tail being abroad. The trustees had deprived themselves of the legal term by assenting to the vesting of the settled land in the tenant in tail. Under S. L. Act, 1925, s. 110 (2). a settlement created before 1926 is brought on to the title, but under the General Conditions of 1925 if a certificate of counsel as to title is given when the vesting deed is made this will keep it off. The mortgage though equitable was rightly made by demise and not by assignment of the term: L. P. Act, 1925. s. 86.

In the case of registered land the registered notice of the equitable title would apparently affect the transaction and consequently the deed would follow substantially the above form. The draft should be approved by the Registrar before completion.

Reservation of rentcharge.

(*x*) A rentcharge can be reserved after 1925 under L. P. Act, 1925, s. 65, without a re-grant by the grantee of the land. For a form of reservation: *ib.*, 5th Sch., Form No. 6. For the remedies of rentchargees: *ib.*, ss. 121-2.

Rentcharge for life.

A rentcharge for life is an equitable interest; the reservation of such a charge creates a settlement: S. L. Act, 1925, s. 1 (1) (v), unless made for money's worth, and must be effected by a trust instrument and vesting instrument:

Rentchargee, hereby conveys, and the Rentchargee, As Mortgagee, and for the purpose only of releasing the property hereinafter described from his said rentcharge, hereby releases unto the Purchaser,

ALL THOSE, &c. (*parcels, see Forms in Sec. II, p.* 471, *et seq*),

TO HOLD unto the Purchaser in fee simple discharged from the said yearly rentcharge of £15 limited by the recited Conveyance and from all powers and remedies for securing the same.

2. PROVIDED that the entirety of said rentcharge shall henceforth issue out of the land comprised in the recited Conveyance and retained by the Vendor as aforesaid.

3. THE Vendor hereby acknowledges (*Form No.* 4, *Sec. III, p.* 480). Documents.

[4. *Add Form No.* 8, *Sec. III, p.* 483, *supra, if required.*] Certificate.

IN WITNESS, &c.(*y*)

No. VII.

CONVEYANCE *of* ENFRANCHISED LAND *with the* CONCURRENCE *of* MORTGAGEES. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of, &c. (hereinafter called the Vendor), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS :— Parties.

(1) On the —— day of ——, the Vendor, pursuant to a Surrender on sale of even date made to the use of himself and his heirs, was admitted tenant of the property hereinafter described (then copyhold of the Manor of —— in the County of ——), to hold to him and his heirs at the will of the lord Admission of Vendor.

ib., s. 4. If made for money's worth then it creates an equitable charge which can be overridden by a trust for sale: L. P. Act, 1925, s. 2 (2), or by a settlement: S. L. Act, 1925, s. 21, created specially for that purpose.

For powers to redeem rentcharges, see L. P. Act, 1925, s. 191; S. L. Act, 1925, s. 73 (1) (ii), (viii), (xiii).

(*y*) In the case of registered land, if the proprietorship of the rentcharge is registered there will be no recitals and the document will be a transfer combined with a discharge, to which the prescribed form No. 55 can easily be adapted. If the rentcharge is merely noted as an incumbrance probably it will be best to have a deed in the above form (which will carry the stamp duty) accompanied (if required by the Registrar) by a transfer in prescribed form No. 19 (which will bear no stamp duty). The title to the incumbrance will have to be investigated by the Registrar, who will, on being satisfied, accept the deed as evidence of discharge. Registered land.

according to the custom of the said manor by and under the rents, fines, suits, and services therefor due and of right accustomed :

Covenant to surrender, conditional surrender, admittance.

(2) (*Recite the covenant to surrender to the use of the Mortgagees and their heirs, with or without the Conditional Surrender and the Admission, if any, of the Mortgagees. It makes no difference whether or not the Mortgagees took a Conditional Surrender or were admitted, a covenant to surrender is sufficient. In any case, the Mortgagees will take a term of* 3,000 *years under L. P. Act*, 1922, 12*th Sch., para.* 1 (*f*), *and L. P. Act*, 1925, *s.* 202, 1*st Sch., Pt. VII, while the Vendor will take the fee simple subject to the manorial incidents saved by L. P. Act*, 1922, *s.* 128, *and to the rights to minerals, sporting rights, &c., reserved to the lord by the* 12*th Sch.*)

Compensation Agreement.

(3) (*Recite the Compensation Agreement between the lord, the Vendor and the Mortgagees, showing whether or not the minerals and sporting rights have been acquired from the lord, with the receipt endorsed for compensation money, fines, &c.*)

Further charge.

(4) (*Recite further charge, if any, in favour of the Mortgagees if they advance the compensation money.*)

Agreement to sell and concur.

(5) (*Recite agreement for sale and for the Mortgagees to concur. Form No.* 21, *Sec. I, p.* 462, *last two paragraphs.*)

NOW &c. (*The operative parts will be the same as in the case of freeholds, see Precedent No. I of this Group, but refer to the further charge, if any, in the habendum as well as to the Mortgage, and except the lord's rights to minerals and sporting rights, unless acquired under the Compensation Agreement.*)

IN WITNESS, &c.(*z*)

No. VIII.

ASSIGNMENT *of* LEASEHOLDS *by a* MORTGAGOR *with the* CONCURRENCE *of* MORTGAGEES. (*Legal Estate.*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of, &c. (hereinafter called the Vendor), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part : WHEREAS :—

Lease.

(1) By a Lease (*Recite Lease to Vendor or Lease and mesne assignments, as in Form No.* 28, *Sec. I, p.* 468) :

(*z*) If the land has been registered after the enfranchisement the procedure will be similar to that in the case of ordinary freehold land subject to a mortgage, see Precedents No. I and No. Ia, *supra*.

(3) By a Mortgage dated the ——, and made between the Vendor of the one part, and the Mortgagees of the other part, the property comprised in the recited Lease was assigned [demised (*a*)] by the Vendor to the Mortgagees for the residue of the said term [except the last three days thereof (*b*)] by way of Mortgage for securing payment to the Mortgagees of the principal sum of £——, with interest thereon as therein mentioned :

Mortgage by assignment

Variations where the Mortgage is by way of sub-demise.

(4) By virtue of the Law of Property Act, 1925, 1st Schedule, Part VIII, the term created by the recited Lease became vested in the Vendor, and a term equal thereto, less the last ten days,(*c*) became vested in the Mortgagees, subject to cesser on payment of the principal money and interest secured by the recited Mortgage :

Conversion of mortgage into mortgage by sub-demise.

(5) The Vendor has agreed to sell to the Purchaser the property comprised in the recited Lease for the residue of the term thereby granted free from incumbrances at the price of £—— : (*d*)

Agreement for sale.

(6) The said principal sum of £——, and no more, is still owing to the Mortgagees upon the security of the recited Mortgage, all interest thereon having been paid as they hereby acknowledge, and they have agreed upon receiving the sum so due to them to join in these presents in manner hereinafter appearing :

Agreement by Mortgagees to concur.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Mortgagees by the direction of the Vendor (the receipt of which sum the Mortgagees hereby acknowledge) and of the sum of £—— paid by the Purchaser to the Vendor (the receipt of which sum of £—— (*e*) and the payment of which sum of £—— (*f*), making together the aggregate purchase-money of £——, the Vendor hereby acknowledges), the Mortgagees, As Mortgagees, and according to their term and by the direction of the Vendor,

Assignment of all the property comprised in the Lease.

(*a*) " Demised " will be substituted for " assigned " where the mortgage is by sub-demise.

(*b*) These words will be added where the mortgage is by sub-demise.

(*c*) This recital must be omitted if the mortgage was originally created by sub-demise. After 1925 a mortgage of leaseholds can only be effected by sub-demise or by charge by way of legal mortgage : L. P. Act, 1925, ss. 86 and 87.

(*d*) As to a purchaser's right to have the head term conveyed to him, see L. P. Act, 1925, s. 42.

(*e*) The amount paid to the vendor.

(*f*) The amount paid to the mortgagees.

hereby surrender and release, and the Vendor, As Beneficial Owner, hereby assigns and confirms unto the Purchaser,

ALL the premises comprised in and demised by the recited Lease,

TO HOLD unto the Purchaser for the residue of the term granted by the recited Lease and at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed and performed, and discharged from all principal money and interest secured by and from all claims under the recited Mortgage,

Merger of derivative term.

TO THE INTENT that the derivative term created by [the Law of Property Act, 1925, as aforesaid (*g*)] the recited Mortgage shall forthwith merge and be extinguished in the term granted by the recited Lease.

Covenant by Purchaser to pay rent and for indemnity.

2. The covenant (C) implied under section seventy-seven of the Law of Property Act, 1925, shall have effect.

[3. *Add Form No.* 8, *p.* 483, *supra, if required.*]

Certificate.

IN WITNESS, &c.(*h*)

GROUP C.—CONVEYANCES ON SALES BY INCUMBRANCERS REALISING THEIR SECURITIES.

No. I.

CONVEYANCE *of* FREEHOLDS *by* MORTGAGEES *under the* STATUTORY POWER *of* SALE. VARIATION *where the* POWER *of* SALE *is expressly conferred by the* MORTGAGE. (*Legal Estate.*)(*a*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and

(*g*) These words will only be used where the mortgage was originally by assignment; in this case the words "the recited mortgage" will be struck out.

(*h*) As to registered land, see notes to Precedents No. I and No. Ia, *supra*.

Mortgagee's power of sale.

(*a*) See L. P. Act, 1925, 5th Sch., Form No. 4. For the operation of the power of sale: *ib.*, ss. 88, 101-107; as to bankruptcy of the mortgagor: *ib.*, s. 110; as to joint accounts: *ib.*, s. 111; as to notice of trusts affecting mortgage debts: *ib.*, s. 113; and as to cesser of mortgage terms: *ib.*, s. 116. Whether or not there is an express power of sale, s. 88 (1) applies so as to pass the fee simple, subject to any prior legal mortgage, and to extinguish the mortgage term or legal charge in right of which the sale is made and any subsequent mortgages. A conveyance on sale by a mortgagee made after 1925 will be deemed to have been made under the statutory power unless a contrary intention appears: *ib.*, s. 104 (3).

C. D., of, &c. (*the Mortgagees*) (*b*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser) of the other part: WHEREAS:—

(1) By a Mortgage [Legal Charge] dated the —— day of ——, and made between —— (*the Mortgagor*) of the one part and the Vendors of the other part (*c*) (*continue Form No.* 3, *or No.* 4A, *Sec. I, pp.* 453-4, *and, if the Mortgage contains an express power of sale, add Form No.* 4, *Sec. I, p.* 454): Mortgage [or Legal Charge].

(2) The said sum of £—— (*continue Form No.* 5, *Sec. I, p.* 454, *supra*). State of mortgage debt and agreement for sale.

NOW in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge) THIS DEED WITNESSETH as follows:— Conveyance under statutory power to Purchaser in fee simple. Variation where power expressly conferred by the Mortgage.

1. THE Vendors, as Mortgagees,(*d*) in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925,(*e*) [by the recited Mortgage], and of all other powers, hereby convey unto the Purchaser

ALL THAT, &c. (*see Forms in Sec. II, p.* 471, *et seq.*).

TO HOLD unto the Purchaser in fee simple discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage. [Legal Charge.]

2. [*Add any necessary acknowledgments as to documents retained and any other special provisions.*]

IN WITNESS, &c.(*f*)

(*b*) If one of the vendors is a married woman and the mortgage debt is held on trust, her husband will not be joined: L. P. Act, 1925, s. 170. Married woman trustee mortgagee.

(*c*) If only part of the property comprised in the mortgage is sold, the words "with other property" will be inserted in the recital of the mortgage, and the usual acknowledgment for production of the mortgage and other material documents should be given by the vendors.

Where the mortgage is executed after 1911, the mortgagee may, under L. P. Act, 1925, s. 101 (2), require a purchaser to enter into restrictive or other covenants, may except or reserve any minerals or powers of working, may convey the minerals apart from the surface, and may grant or reserve any easements for building, mining or other purposes (*cf. Born* v. *Turner* [1900], 2 Ch. 211; 69 L. J. Ch. 593). These additional powers will enable the mortgaged land to be disposed of to the best advantage. Restrictive covenants, minerals, easements.

(*d*) Where mortgagees are selling the words "according to their term," which are used when they merely concur, are omitted.

(*e*) The conveyance made after 1925 need not be made in professed exercise of the statutory power of sale in order to give the purchaser the protection of L. P. Act, 1925, s. 104, see sub.-s. 3. Reference to power.

(*f*) In the case of registered land, if the mortgage is a registered charge or an incumbrance prior to registration whereof a proprietor has been As to registered land.

No. II.

CONVEYANCE *by* MORTGAGEE *who claims* ABSOLUTE OWNERSHIP *as having been in* POSSESSION *for* TWELVE (*g*) YEARS *without* ACKNOWLEDGMENT *of* MORTGAGOR'S TITLE.(*h*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c.; BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser) of the other part: WHEREAS :—

Mortgage by demise or legal charge.

(1) (*Recite the Mortgage to the Vendor by demise or the Legal Charge showing that the date for payment of the mortgage debt is passed.*)

Taking possession.

(2) In the year 19— the Vendor took possession of the property hereinafter described or of the rents and profits thereof, and since that time has remained in undisputed possession thereof, without giving any acknowledgment to the Mortgagor or the persons deriving title under him :

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registered, the conveyance will be in the prescribed Form No. 31. If the mortgage is not such a charge or incumbrance the above form will apply.

Position of trustees after right of redemption is barred.

(*g*) Twelve years are substituted for twenty years by the R. P. Lim. Act, 1874, s. 7. As to the position of trustees who have acquired land by reason of the right of redemption having been barred, see L. P. Act, 1925, s. 31.

Effect of conveyance by a mortgagee in possession for twelve years.

(*h*) In one way or another the purchaser will get a good title. If the mortgagee has acquired the fee simple free from any right of redemption under the Statutes of Limitation, he can sell as owner. If, however, any question should arise as to the completeness of the ownership, the conveyance will operate as an execution of the power of sale without any express reference to it, and thus the existence of this power, and its exercise, if required, obviate the necessity of the vendor proving his uninterrupted possession for the required period, and prevent the purchaser on the other hand from depending on an unmarketable title : *Re Alison* (1879), 11 Ch. D. 284. Sections 88 and 89 of L. P. Act, 1925 (realisation of freehold and leasehold mortgages) apply whether the mortgage is made before or after 1926, but s. 101 (taking the place of Conveyancing Act, 1881, s. 19) only applies to mortgages made after 1881.

Lord Cranworth's Act.

If the mortgage is dated before 1882, s. 13 of Lord Cranworth's Act, 1860 (23 and 24 Vict. c. 145), relieves a purchaser, after conveyance, from inquiry as to the regularity of such a sale.

If the mortgage is after 1881, L. P. Act, 1925, s. 104, has the same effect from the date of sale.

Though Lord Cranworth's Act was repealed by s. 71 of the Conv. Act, 1881, that section preserved in respect of mortgages made before 1882, the power of sale conferred by the former Act : *Re Solomon and Meagher* (1889), 40 Ch. D. 508 ; 58 L. J. Ch. 339 ; *Re Boucherett* [1908], 1 Ch. 180 ; 77 L. J. Ch. 205. Where title is acquired by a mortgage under the Limitations Acts after 1925, he must execute an enlargement deed or vesting deed under L. P. Act, 1925, s. 88 (3) or s. 89 (3), in order to acquire the fee simple or the leasehold reversion.

Enlargement or vesting deeds.

(3) By an Enlargement Deed dated——, the Vendor, pursuant to sub-section (3) of section eighty-eight of the Law of Property Act, 1925, declared that the term created by the recited mortgage should be thereby enlarged into a fee simple discharged from any legal mortgage affected by the title acquired by the Vendor under the Limitation Acts : Enlargement deed [or vesting deed].

[*Or where the security is effected by a Legal Charge.* By a vesting Deed dated —— the Vendor pursuant to sub-section (3) of section eighty-eight of the Law of Property Act, 1925, declared that the fee simple in the property affected by the recited Legal Charge was vested in him discharged from any legal mortgage affected by the title acquired by the Vendor under the Limitation Acts :]

(4) (*Recite agreement to sell in right of his estate and if and so far as the title to the fee simple may be defective in exercise of the statutory power implied under the recited security.*) Agreement for sale.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— to the Vendor now paid by the Purchaser (*the receipt, &c.*), the Vendor, As Beneficial Owner, according to his estate and in exercise of every power, statutory or otherwise, him enabling, hereby conveys unto the Purchaser, Conveyance.

All (*parcels, see Forms in Sec. II, p.* 471, *et seq.*),

To hold unto the Purchaser in fee simple discharged from all right of redemption and claims under the recited security.

[2 and 3. *Add Forms Nos.* 4 *and* 8, *in Sec. III, pp.* 480, 483, *if required.*] Documents Certificate.

In witness, &c.(*i*)

No. III.

CONVEYANCE *of* Enfranchised Land, *subject to* Manorial Incidents *by a* Mortgagee *under the statutory* Power *of* Sale. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., Between A. B., of, &c., and C. D., of, &c. (*the Mortgagees*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part : Whereas :— Parties.

(*i*) If the land is registered and the vendor is the registered proprietor of a charge or of an incumbrance, he should be registered as proprietor of the land before the sale : see L. R. Act, 1925, s. 110 (5). If the mortgage is merely noted as an incumbrance, the above form will apply. As to registered land.

(*Recite the covenant to surrender and other matters as in Form* 22, *Sec. I, p.* 463.)(*j*)

NOW in pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge) THIS DEED WITNESSETH as follows :—

Conveyance.

1. THE Vendors in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and of all other powers, and As Mortgagees, hereby convey unto the Purchaser,

ALL THOSE, &c.

TO HOLD unto the Purchaser in fee simple subject to the manorial incidents and rights reserved to the lord of the said manor by the Law of Property Act, 1922, but discharged from all right of redemption and claims under the recited securities.

Documents. Certificate.

[2 and 3. *Add Forms Nos.* 4 *and* 8, *Sec. III, pp.* 480, 483, *if required.*]

IN WITNESS, &c.(*k*)

No. IV.

ASSIGNMENT *of a* LONG TERM (*created by an* ORDER *of the* COURT *to raise* PORTIONS) *by* MORTGAGEES *under their* STATUTORY POWER *of* SALE, *and* ENLARGEMENT *of the* TERM. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*the Mortgagees*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part : WHEREAS :—

(1)-(8) (*Recite the Settlement, vesting assent, equitable mortgage, vesting order, landcharge, and other matters* (1) *to* (8) *as in Precedent No.* 5, *Group B, p.* 525.)

Principal and interest due and agreement for sale.

(9) The said sum of £—— and an arrear of interest thereon are still due to the Vendors upon the security of the recited

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Production to steward.

(*j*) This conveyance must be produced to the steward for endorsement and the customary payments made within six months from date : L. P. Act, 1922, s. 129. The statutory power of sale is implied under the covenant to surrender, for that is a "mortgage deed" within L. P. Act, 1925, s. 101. Under the L. P. Act, 1922, 12th Sch., and L. P. Act, 1925, 1st Sch., Pts. II, and VII (see also s. 202), the fee simple became vested in the mortgagor, while the mortgagees took a term of 3,000 years, but can convey the fee simple under s. 88.

As to registered land.

(*k*) If the land has been registered after the enfranchisement, the procedure will be similar to that in the case of freehold land subject to manorial incidents. There will be no need to refer to the manorial incidents ; they will appear on the register.

Mortgage and Vesting Order, and they have agreed to sell to the Purchaser free from incumbrances the property hereinafter described for the residue of the said term of 500 years (less three days) at the price of £——: (*l*)

NOW THIS DEED WITNESSETH as follows:—

Assignment of the property to the Purchaser for the residue of the mortgage term.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of whjch sum the Vendors hereby acknowledge) the Vendors, in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and of all other powers, and As Mortgagees, hereby assign unto the Purchaser,

All those, &c. (*see Forms, Sec. II, p.* 471, *et seq.*),

To hold unto the Purchaser for the residue of the said term of 500 years less three days created by the recited Vesting Order Together with all such estate or interest (if any) as the Vendors may have power to convey in the reversion expectant on the said term discharged from all right of redemption and claims under the recited Mortgage and Vesting Order.

Enlargement of term.

2. In exercise of the power for this purpose conferred by section one hundred and fifty-three of the Law of Property Act, 1925, the Purchaser hereby declares that (so far as regards the land comprised in the term hereinbefore assigned) from and after the execution of this deed, the said term shall be enlarged into a fee simple.

Order of operation.

3. For the purposes of this deed, clause one hereof shall have effect immediately before clause two hereof, and this deed shall be executed and delivered by the Vendors before the same is executed by the Purchaser.

In witness, &c.(*m*)

Conveyance of mortgage terms

(*l*) A mortgagee may sell and convey his mortgage term if he is unable to convey or vest the leasehold reversion: L. P. Act, 1925, s. 42 (5). In the case in the text the legal term created by the vesting order was in fact derived out of the fee simple; hence if the mortgagees have power to convey any reversion (*ib.*, s. 88) it must be the fee simple; the trustees of the settlement only had an equitable mortgage term which they sub-demised. To avoid doubt the term should be enlarged; it will under s. 153 (7) vest in the person in whom it was "previously vested." The *unu flatu* doctrine, as to the operation of deeds, is now generally disregarded where the deed shows that its operative parts are intended to take effect successively; clause 3 makes this clear. The assignment of the term operates to pass the "possession" without actual entry (ss. 51 (1), 149 (2)); hence the purchaser is in "possession" for the purposes of s. 153 (6) (i).

Unu flatu doctrine.

"Possession" without entry.

As to registered land.

(*m*) In the case of registered land—(i) If the money was actually raised before the first registration of the land, the term will be an incumbrance prior

No. V.

ASSIGNMENT *of a* MORTGAGE TERM *by* MORTGAGEES *by* SUB-DEMISE *under the* STATUTORY POWER *of* SALE, *where the property consists of part only of the property comprised in the* LEASE *and the* RENT *has not been legally* APPORTIONED. (*Legal Estate.*) (*n*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*the Mortgagees*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Lease.

(1) By a Lease dated the —— day of —— (*Recite Lease to X. at a Rent of* £10 *as in Form No.* 28, *Sec. I, p.* 468):

Mortgage by sub-demise of part.

(2) By a Mortgage dated the ——, and made between the said X. of the one part and the Vendors of the other part, All that, &c., being part of the property comprised in the recited Lease was demised by the said X., As Beneficial Owner, to the Vendors for the residue of the said term of —— years, less three days, subject to cesser on payment on a day therein mentioned and since passed of the principal sum of £—— and interest thereon as therein mentioned And the said X. thereby charged the yearly rent reserved by the recited Lease on the part of the property

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to registration and the above form will apply; after its execution the purchaser will apply to the registered proprietor to execute a transfer in his favour under r. 131, and if he refuses (as he may, not being compellable under L. R. Act, 1925, s. 103) the purchaser will apply to the Registrar, under the same rule, to enter him as proprietor under his paramount title: (ii) If the money was actually raised after the first registration of the land, it will have been the subject of an ordinary registered charge: L. R. Act, 1925, s. 90, and r. 144. It will be enforced in the usual way and the above form will not apply.

Case where mortgagee can only convey the mortgage term.

(*n*) This is the one case where under L. P. Act, 1925, s. 89 (6), the mortgagee cannot convey the leasehold reversion. It meets the objection taken to Lord Cranworth's Act, 1860, s. 13 (23 & 24 Vict. c. 145), which in all cases authorised the leasehold reversion to be conveyed. The ground for the objection was that a lessee should not be encouraged to split up the property demised to him among different mortgagees without either arranging for a legal apportionment of the rent, or effecting the transaction by sub-demises which would not afterwards be disturbed by the mortgagees conveying different parts of the head term. It is still open for the mortgagor to give an irrevocable power for the mortgagees and the persons deriving title under them to assign the head term: L. P. Act, 1925, ss. 127 and 129; or to declare a trust of the head term and give power to remove the trustees and appoint new trustees: T. Act, 1925, s. 36 (2). It is assumed in this Precedent that these powers were not conferred. If an irrevocable power of attorney is conferred the mortgagor can be expressed to be made a party and the head term would be assigned.

Irrevocable power of attorney.

thereby demised which was not included in the said Mortgage in exoneration of the property comprised in that Mortgage :(*o*)

(3) The said sum of £—— and an arrear of interest thereon are due to the Vendors upon the security of the recited Mortgage, and they have agreed to sell to the Purchaser free from incumbrances the property comprised in the recited Mortgage for the residue of the derivative term created by the recited Mortgage, at the price of £—— : Principal and interest due and agreement for sale.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and of all other powers, and As Mortgagees, hereby assign unto the Purchaser, Assignment of the derivative term.

ALL the premises comprised in and demised by the recited Mortgage,

TO HOLD unto the Purchaser for the residue of the derivative term created by the recited Mortgage, discharged from all right of redemption and claims thereunder Together with the benefit of the charge of rent by way of indemnity contained in the recited Mortgage.

[*Add Form No.* 8, *Sec. III, p.* 483, *if required.*] Certificate.

IN WITNESS, &c.(*p*)

No. VI.

ASSIGNMENT *of* LEASEHOLDS *by* MORTGAGEES *under the* STATUTORY POWER *of* SALE, *where the* HEAD TERM *is assigned to the* PURCHASER. (*Legal Estate.*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c., C. D., of, &c., and E. F., of, &c. (hereinafter called the Vendors), of the one part, and G. H., of &c. (hereinafter called the Purchaser), of the other part : WHEREAS :— Parties.

(1) By a Lease dated the —— (*Recite Lease as in Form No.* 28, *Sec. I, p.* 468, *to the Borrower, defining the term as* " the Head Term ") : Lease.

(*o*) For the covenants implied by a mortgagor sub-demising as beneficial owner, see L. P. Act, 1925, 2nd Sch., Pt. IV ; this charge is an additional remedy. Implied covenants in mortgage of leases.

(*p*) Where the head term is registered and the sub-demise was made after first registration *semble* the mortgagee can assign the leasehold reversion in all cases: L. R. Act, 1925, s. 34 (5), hence this form will not apply. As to registered land.

Legal charge.

(2) By a Legal Charge dated the —— and made between the Borrower of the one part and the Vendors of the other part, the Borrower charged by way of legal mortgage the property comprised in the recited Lease with the payment to the Vendors of the principal sum of £—— on a day therein mentioned and since passed, with interest thereon as therein mentioned :(*q*)

Mortgage by sub-demise.

[*or* By a Mortgage dated, &c., and made (*as above*), the Borrower demised the property comprised in the recited Lease to the Vendors for the residue of the term thereby granted, less the last three days thereof, for securing payment to the Vendors of the principal sum of (*continue as above*) :]

Principal and interest due and agreement for sale.

(3) The said sum of £—— and an arrear of interest thereon are due to the Vendors upon the security of the recited Legal Charge [Mortgage], and they have agreed to sell to the Purchaser free from incumbrances the property demised by the recited Lease for the residue of the Head Term at the price of £—— :

NOW in pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge) THIS DEED WITNESSETH as follows :—

Assignment of the Head Term to the Purchaser.

1. THE Vendors in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and of all other powers, and As Mortgagees [as respects the term created by the recited Mortgage hereby surrender and as respects the term created by the recited Lease], hereby assign unto the Purchaser,

ALL the premises comprised in and demised by the recited Lease,

TO HOLD unto the Purchaser for the residue of the Head Term created by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed, but discharged from all right of redemption and claims under the recited Legal Charge [Mortgage and TO THE INTENT that the said derivative term shall henceforth merge and be extinguished in the Head Term].

Statutory power extends to the leasehold reversion.

(*q*) Save in the case mentioned in the last Precedent, the statutory power of sale authorises the mortgagees to convey the head term affected by the charge or mortgage by sub-demise : L. P. Act, 1925, s. 89 (1). The head term can be conveyed in the name of the borrower, in which case he will be expressed to be a party, and the mortgagees will sign his name : *ib.* ; but in many cases the mortgagees may not know who the estate owner is in whom the head term is vested, hence this practice will not usually be adopted.

2. THE covenant (C) referred to in section seventy-seven of the Law of Property Act, 1925, shall be herein implied.(*r*) Covenant to pay rent, &c.

IN WITNESS, &c. (*s*) (*t*)

No. VII.

ASSIGNMENT *of* PART *of the property comprised in a* LEASE *by* MORTGAGEES *under the* STATUTORY POWER *where the* HEAD TERM *is got in under a* POWER OF ATTORNEY. (*Legal Estate.*)(*u*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors), of the 1st part, Y., of, &c. (hereinafter called the Borrower of the 2nd part, and E. F., of &c. (hereinafter called the Purchaser), of the 3rd part: Parties.

WHEREAS:—

(1) By a Lease dated the —— (*Recite Lease to X. at a rent of* £10, *as in Form No.* 28, *Sec. I, p.* 468, *defining the term as* "the Head Term"): Lease.

(2) By an Assignment dated —— and made between the said X. of the one part, and the Borrower of the Assignment of part of the property.

(*r*) Though the vendors have never become legally liable for the rent or for the performance of the lessee's covenants, it is the practice to give this covenant for indemnity.

(*s*) In the above Precedent the words in square brackets will be struck out throughout if the security was effected by a charge by way of legal mortgage and not by a mortgage by sub-demise. These are the only two methods by which a legal mortgage of leaseholds can be effected after 1925: L. P. Act, 1925, s. 86. Legal mortgages of leases.

(*t*) In the case of a registered charge on registered land this form does not apply, the case being provided for by L. R. Act, 1925, s. 34 (5); a transfer in the usual form will be required. Registered land.

(*u*) See the notes to Precedent V of this group. In the case in the text the assignment of part of the land at an equitably apportioned rent having been made before the charge was taken, the mortgagees would generally stipulate for an irrevocable power of attorney under L. P. Act, 1925, ss. 127 and 129. The covenants in the assignment implied under s. 77 run with the land without an express assignment: sub-s. 5. For the other remedies where the rent is equitably apportioned: *ib.*, s. 190 (3) and (4).

This is not one of the cases where the power of attorney (being vested in a "legal mortgagee": L. P. Act, 1925, s. 10), must be executed in the name of the donor of the power: L. P. Act, 1925, ss. 7, 8, 123; but if the vendors elect to use the borrower's name then the testimonium will run thus:— Execution of power of attorney.

"IN WITNESS whereof the Vendors have hereunto set their respective hands and seals and by virtue of the recited power of attorney have also set the hand and seal of the Borrower the day and year first above written."

Then against the signature of the borrower will be added "by the Vendors his attorneys." The borrower would be expressed to be a party and "the Borrower" would be defined to include the person in whom the head term was vested.

other part, All that, &c., being part of the land comprised in the recited Lease, was assigned to the Borrower for the residue of the Head Term at the yearly rent of £5 (part of the rent reserved by the recited Lease) and subject to the lessee's covenants and conditions, so far as the same affected the property thereby assigned And by the said Assignment covenants (D) (i) and (ii) referred to in section seventy-seven of the Law of Property Act, 1925, were implied, together with the remedies conferred by section one hundred and ninety of that Act; but the rent reserved by the recited Lease has never been legally apportioned:

Legal charge of part with power of attorney.

(3) By a Legal Charge dated —— and made between the Borrower of the one part, and the Vendors of the other part, the Borrower charged by way of legal mortgage the property comprised in the recited Assignment with the payment to the Vendors of the principal sum of £——, on a day therein mentioned and since passed, and interest thereon as therein mentioned And the Borrower thereby irrevocably appointed the Vendors and the persons deriving title under them as his attorneys in his name, or otherwise to assign the property thereby charged for the residue of the Head Term, and in the case of a Purchaser under the statutory power of sale free from all right of redemption under the said charge:

Principal and interest due and agreement for sale.

(4) The said sum of £—— and an arrear of interest thereon are due to the Vendors upon the security of the recited Charge, and they have agreed to sell to the Purchaser free from incumbrances the property comprised in the recited Assignment for the residue of the term created by the recited Lease at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Assignment to Purchaser of the mortgage term.

1. In pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and the recited power of attorney, and of all other powers, and As Mortgagees, hereby assign and the Borrower hereby assigns and confirms unto the Purchaser

All the premises comprised in the recited Assignment,

To hold unto the Purchaser for the residue of the term created by the recited Lease at the rent and subject to the lessee's covenants and conditions, affecting the said property, and with the benefit of the implied covenants and remedies referred

to in the recited Assignment, but discharged from all right of redemption and claims under the recited Charge.

2. THE covenant (D) (i), referred to in section seventy-seven of the Law of Property Act, 1925, shall be herein implied, but no covenant by the Vendors to pay rent or to observe or perform lessee's covenants or conditions shall be implied. Covenant to pay apportioned rent.

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*] Certificate.

IN WITNESS, &c.(*v*)

No. VIII.

CONVEYANCE *of* FREEHOLDS, ENFRANCHISED LAND, *and* ASSIGNMENT *of* LEASEHOLDS *by* THE EXECUTORS *of a* MORTGAGEE *under the* STATUTORY POWER *of* SALE. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors (*w*)), of the one part, and E. F., of, &c. (hereinafter called the Purchaser) of the other part: WHEREAS:— Parties.

(1) By a Lease dated the —— (*Recite Lease as in Form No.* 28, *Sec. I, p.* 468, *defining the Lessee as* "the Borrower" *and the term as* "the Head Term"): Lease.

(2) By a Legal Charge dated —— 1927, and made between the Borrower of the one part, and G. H. (hereinafter called the Mortgagee) of the other part the Borrower charged by way of legal mortgage the freehold land first hereinafter described the enfranchised land secondly hereinafter described (which as appears from the said charge had been freed from manorial incidents under the Compensation Agreement therein mentioned relating also to the lord's rights to minerals and sporting rights) to both of which properties the Borrower was then seised in fee simple free from incumbrances and thirdly the property comprised in the recited Lease with the payment to the Mortgagee of the principal sum of £—— on a day therein mentioned and since passed and interest thereon as therein mentioned: Charge of freeholds, enfranchised land, and leaseholds.

(*v*) Under L. P. Act, 1925, s. 125, certified copies of the material parts of powers of attorney to dispose of an interest in land must be filed unless the instrument only relates to one transaction and is to be handed over on completion. In the case in the text the charge containing the power will be handed over to the purchaser, hence he will not require an office copy. Nor, it seems, need it be filed. A vendor has no right to rescind if a purchaser insists on his rights under that section. The attorney should also sign the name of the borrower. Filing of powers of attorney relating to land.

(*w*) The executors are defined as the vendors in this precedent.

Death of Mortgagee, his Will and probate.

(3) The Mortgagee died on the —— having by his Will dated the —— appointed the Vendors to be his executors, (*x*) who on the —— duly proved his said Will at the Principal [—— District] Probate Registry:

Principal and interest due and agreement for sale

(4) The said sum of £——, with an arrear of interest thereon, is now owing to the Vendors as such executors as aforesaid upon the security of the recited Charge and they have agreed to sell the said freehold, enfranchised copyhold, and leasehold lands to the Purchaser free from incumbrances at the price of £——:

Conveyance of freeholds, enfranchised land.

NOW in pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge) THIS DEED WITNESSETH as follows:—

1. THE Vendors, in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and of all other powers, and As Personal Representatives of the Mortgagee (since deceased), hereby convey unto the Purchaser,

FIRST ALL THOSE, &c. (*Forms in Sec. II, p.* 471, *et seq.*),

SECONDLY ALL THOSE, &c. (*the enfranchised land*),

TO HOLD unto the Purchaser in fee simple, discharged from all right of redemption and claims under the recited Charge.

Assignment of head term in leaseholds.

2. THE Vendors, in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and of all other powers, and As Personal Representatives of the Mortgagee, hereby assign unto the Purchaser,

ALL the premises comprised in and demised by the recited Lease,

TO HOLD unto the Purchaser for the residue of the term created by the recited Lease at the rent and subject to the lessee's covenants and conditions respectively reserved by and contained in that Lease, but discharged from all right of redemption and claims under the recited Charge.

IN WITNESS, &c.

Devolution of mortgage estates.

(*x*) A mortgagee having died after 1925, all his real estate and chattels real including mortgage estates pass to his personal representatives under Ad. of E. Act, 1925, ss. 1 and 3; "real estate" includes "every interest in or over land" but not "money secured or charged on land," that would pass to the personal representatives under the general law; in any case a charge by way of legal mortgage (L. P. Act, 1925, s. 87, see also definitions of "legal mortgagee" and "mortgagee," *ib.*, s. 205 (1) (xvi)) must pass to the personal representatives.

GROUP D.—CONVEYANCES ON SALES BY CO-OWNERS (INCLUDING TRUSTEES UNDER IMPLIED TRUSTS FOR SALE). (*a*)

No. I.

CONVEYANCE *of* FREEHOLDS *by a husband and wife who were formerly* TENANTS *by* ENTIRETIES. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. B., his wife [who were married on the —— day of——, 18—] (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Will creating tenancy by entireties.

(1) G. H., being at his death seised in fee simple in possession free from incumbrances, duly made his Will dated the —— day of ——, and thereby, after appointing X. and Y. to be his executors, devised the property hereinafter described To the use of the Vendors and their heirs: (*b*)

Death of testator and probate.

(2) The said testator died on the —— day of ——, 1882, without having revoked or altered his said Will, which was on the —— day of —— duly proved at the Principal Probate Registry by the executors therein named:

Conversion of tenancy by entireties into joint tenancy and creation of trust for sale.

(3) By virtue of Part VI of the 1st Schedule to the Law of Property Act, 1925, the tenancy by entireties of the Vendors

(*a*) In the case of registered land all co-ownerships are alike joint proprietorships and none of the forms in this group apply.

Registered land.

(*b*) A gift to husband and wife before 1883 created a tenancy by entireties as they were considered one person at law. They each held the entirety, and if they made no joint disposition the property belonged to the survivor.

Tenancy by entireties.

After the M. W. P. Act, 1882, they no longer took as one person, but as tenants in common or joint tenants, as the case might be, in the same way as if they were unmarried: *Thornley* v. *T.* [1893], 2 Ch. 229; 62 L. J. Ch. 370; and see *Dunbar* v. *D.* [1909], 2 Ch. 639; 79 L. J. Ch. 70.

M. W. P. Act, 1882.

Gift to husband and wife and third person.

Before 1926 under a gift to husband and wife and a third person, whether before or after the M. W. P. Act, 1882, if there were no provisions to the contrary, the husband and wife took one moiety and the third person the other moiety: see *Re Jupp* (1888), 39 Ch. D. 148; 57 L. J. Ch. 774; *Re March* (1884), 27 Ch. D. 166; 54 L. J. Ch. 143; *Re Dixon* (1889), 42 Ch. D. 306; *Re Gue* [1892], 67 L. T. 823; *Re Jeffery* [1914], 1 Ch. 375; 83 L. J. Ch. 251. A gift so made after 1925 of any property operates as if the husband and wife were two persons (L. P. Act, 1925, s. 37), hence they and the third person will either take as joint tenants or beneficially in equal shares; but whether they take land as joint tenants or beneficially as tenants in common they will hold the legal estate in the entirety on trust for sale and the beneficial interests will attach to the proceeds of sale and to the rents and profits until sale (L. P. Act, 1925, ss. 34-36; 1st Sch., Pt. IV); in the case of all trusts for sale a power to postpone is implied (*ib.*, s. 25), and full powers of management are given by s. 28. But nothing in the Act prevents easements being held in common (s. 187 (2)); while special provision is made for party structures and open spaces used in common: s. 38; 1st Sch., Pt. V.

created by the recited Will, was converted into a joint tenancy, but without prejudice to any beneficial interest, and under sub-section (1) of section thirty-six of that Act, the legal estate of the Vendors in the property hereinafter described became subject to a trust for sale:

Agreement for sale.

(4) The Vendors have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Conveyance by joint tenants, under an implied trust for sale.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Beneficial Owners (*c*) [do and each of them, As Beneficial Owner and by the direction of the other of them doth (*d*)], hereby convey unto the Purchaser,

ALL THOSE, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple.

Documents. Certificate.

[2 and 3. *Add, if required, acknowledgment and undertaking, Form No.* 4, *Sec. III, p.* 480; *also Form* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c. (*e*)

No. II.

CONVEYANCE *of* FREEHOLDS *by persons who were formerly* CO-PARCENERS. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., Spinster, and C. B., of, &c., Spinster (hereinafter called the

Implied covenants.

(*c*) This implies a joint covenant by the vendors as to the entirety that, notwithstanding anything by them, &c., they have full power, &c. Apart from express contract it seems they would be bound to give a joint covenant. Where they convey separately each would covenant for his own interest, see Co. Lit. 186a.

(*d*) The words in square brackets imply a several covenant by each of the vendors, that notwithstanding anything by him, &c., he, with the concurrence of the other, has full power, to convey, &c.

When purchaser entitled to joint and several covenants.

Where the sale is made by vendors without disclosing the nature of their interests and without any special agreement as to covenants, it is conceived that the purchaser may be entitled, whatever may be the nature of those interests as shown by the abstract, to joint and several covenants as to the entirety: *National Society, &c.* v. *Gibbs* [1900], 2 Ch. 280; 69 L. J. Ch. 457 see also Dart, 7th ed., 573.

No acknowledgment by married woman.

(*e*) Before 1926, if the marriage occurred before 1883 and the property was acquired before 1883 the deed had to be acknowledged under the Fines and Recoveries Act, 1833, as amended by the Conv. Act, 1882, s. 7; *Johnson* v. *Clark* [1908], 1 Ch. 303; 77 L. J. Ch. 127; but after 1926 a married woman will not have to acknowledge any deed nor will she be separately examined when money is paid out of court: L. P. Act, 1925, s. 167.

Vendors) of the one part, and E. F., of., &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

(1) G. H., being at his death seised in fee simple in possession free from incumbrances of the property hereinafter described, died intestate without leaving a widow (*f*) on the —— day of —— 1897: Seisin, intestacy.

(2) The said G. H. had two children, and no more, namely, the Vendors, upon whom the property hereinafter described devolved (*g*) as his heiresses-at-law and as co-parceners: Devolution upon Vendors as co-parceners.

(3) By virtue of the Law of Property Act, 1925, 1st Schedule, Part IV, paragraph 1 (2), the property became vested in the Vendors as joint tenants on the statutory trusts defined in section thirty-five of that Act: Creation of joint tenancy and trust for sale.

(4) The Vendors have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——: Agreement for sale.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £——, now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby respectively acknowledge), the Vendors, As Trustees, hereby convey and each of the Vendors as to her undivided moiety, in the proceeds of sale and, As Beneficial Owner, hereby conveys unto the Purchaser,

ALL THAT, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple.

[*Add, if required, acknowledgment and undertaking, Form No.* 4, *Sec. III, p.* 480 *; also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

No. III.

CONVEYANCE *by* PARTNERS *who were formerly entitled as* TENANTS *in* COMMON. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., C. D., of, &c., and E. F., of, &c. (hereinafter called the Vendors), Parties.

(*f*) Except in the case of land to which the custom of gavelkind applied, where male heirs formerly took as co-parceners, a tenancy in co-parcenary was confined to females. If the intestate died after 1897, then the conveyance by the administrator to the two co-parceners must be recited: L. T. Act, 1897, Pt. I. If the widow survived she might be entitled to dower. Gavelkind. Conveyance by administrator.

(*g*) Gavelkind is abolished as a mode of descent in regard to devolutions after 1925: Ad. of E. Act, 1925, s. 45. It is assumed in this Precedent that neither vendor had incumbered or dealt with her former undivided share, or that the incumbrances on the undivided shares had been discharged before 1926. Had Incumbrances affecting undivided shares.

of the one part, and G. H., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Mortgage of the entirety.

(1) By a Mortgage dated, &c., and made between X. of the one part and Y. of the other part, the property hereinafter described was conveyed to the said Y. in fee simple subject to redemption by the said X. on payment of the principal sum of £—— with interest thereon as therein mentioned:

Conveyance of equity of redemption to partners (not being more than four) in equal shares.

(2) By a Conveyance dated, &c., and made between the said X. of the one part and the Vendors of the other part, in consideration of the sum of £—— and of a covenant by the Vendors to pay the said mortgage debt and interest, the property hereinafter described was conveyed to the Vendors in fee simple in equal shares as tenants in common as part of their partnership property, but no incumbrance has been created affecting any of the said shares:

Creation of mortgage term and vesting in the partners on the statutory trust.

(3) By virtue of the Law of Property Act, 1925, 1st Schedule, the said property became vested in the said Y. for a term of 3,000 years without impeachment of waste and subject to cesser on redemption by the Vendors, and the fee simple in the same property became vested in the Vendors in fee simple as joint tenants on the statutory trusts defined in section thirty-five of that Act: (*h*)

Agreement for sale of the equity of redemption.

(4) The Vendors have agreed to sell the said property to the Purchaser for an estate in fee simple in possession subject to the recited Mortgage, but otherwise free from incumbrances at the price of £——:

State of mortgage debt.

(5) The said principal sum of £——, and no more, remains owing on the security of the recited Mortgage with the current interest thereon:

NOW in pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendors (the receipt, &c.) and of the covenant by the Purchaser hereinafter contained THIS DEED WITNESSETH as follows:—

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there been a subsisting incumbrance affecting an undivided share the land would have vested in the Public Trustee under L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (4).

Mortgages of entirety unaffected. Shifting of incumbrances affecting undivided shares.

(*h*) Mortgages of the entirety, converted into long term mortgages, remain paramount to the joint estate in fee simple acquired by the former tenants in common under L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (2); hence in this case the legal fee simple is made to vest in the beneficial owners and not in the Public Trustee. When that schedule does shift a charge on an undivided share to the corresponding share in the net proceeds of sale it either vests the land in the Public Trustee, or in some other trustees.

1. THE Vendors, As Beneficial Owners, hereby convey unto the Purchaser, Conveyance.

ALL THAT the (*Forms, Sec. II, p. 471 et seq.*),

TO HOLD unto the Purchaser in fee simple, subject to the recited Mortgage and to the principal money and interest thereby secured.

2. THE Purchaser hereby (*i*) covenants with the Vendors that the Purchaser and the persons deriving title under him will pay the said principal money and all interest henceforth to become due thereon and will at all times hereafter save harmless and keep indemnified the Vendors and their respective estates and effects from and against the principal money and interest secured by the recited Mortgage and from all claims thereunder. Covenant to pay mortgage debt.

IN WITNESS, &c. (*j*)

No. IV.

CONVEYANCE *where legal estate was formerly vested in an* INFANT *with another person of full age beneficially. (Legal Estate.)*

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) By a Conveyance dated, &c., 1925, and made between X. of the one part and the said A. B. and G. Y. (then an infant of the age of 18 years) of the other part, the property hereinafter described was conveyed to the use of the said A. B. and G. Y. in fee simple: Conveyance to an infant and a person of full age.

(2) By virtue of the Law of Property Act, 1925, 1st Schedule, Part III, paragraph two, the said property on the 1st day of January, 1926, became vested in the said A. B. solely in fee simple on the statutory trusts, the said G. Y. being still an infant: Vesting in the person of full age on trust for sale.

(3) By an Appointment dated, &c., and made between R. Y. and M. Y. (the father and mother of the said G. Y.) of the 1st part, the said C. D. of the 2nd part, and the Vendors of the 3rd part, in exercise of the powers conferred by the said paragraph the said R. Y. and M. Y. appointed the said C. D. to be Appointment of an additional trustee.

(*i*) This covenant operates as a covenant with the vendors jointly and as a separate covenant with each of them: L. P. Act, 1925, s. 81 (1). Implied separate covenants.

(*j*) This Precedent can be adapted to the case where the partners were entitled to a term of years absolute as tenants in common; the lease and the title thereto will then be recited. Leaseholds.

an additional trustee of the property comprised in the recited Conveyance, and thereupon the said property became vested in the Vendors in fee simple upon the statutory trusts : (*k*)

Agreement for sale.

(4) The Vendors, as trustees for sale, have agreed to sell the property hereinafter described for an estate in fee simple in possession free from incumbrances to the Purchaser at the price of £—— :

NOW in pursuance of the said agreement and in consideration of the sum of £—— now paid to the Vendors as such Trustees as aforesaid by the Purchaser (the receipt, &c.) THIS DEED WITNESSETH as follows :—

Conveyance.

1. THE Vendors, As Trustees, hereby convey unto the Purchaser,

ALL THAT the (*see Forms, Sec. II, p.* 471),

TO HOLD unto the Purchaser in fee simple.

[2 and 3. *Add acknowledgment, Form No.* 4, *Sec. III, p.* 480, *and Certificate, Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c. (*l*)

No. V.

CONVEYANCE *by* PERSONAL REPRESENTATIVES *or* TRUSTEES *who formerly held the land in trust for* TENANTS *in* COMMON. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors), of the one part and E. F., of, &c. (hereinafter called the Purchaser), of the other part : WHEREAS :—

Will devising property in trust for testator's children equally.

Additional trustees.

Procedure where an infant was a personal representative or trustee for sale or mortgagee with a person of full age.

Infant solely entitled as trustee for sale, personal representative or mortgagee.

(1) X. G., being at his death seised of the property hereinafter described for an estate in fee simple in possession free from incumbrances, duly made his Will dated, &c., and thereby,

(*k*) As to the appointment of additional trustees, or of a trustee in place of an infant : T. Act, 1925, s. 36 (1), (6), but in the case in the text the appointment is made under L. P. Act, 1925, 1st Sch., Pt. III, para. 2. As to "statutory trusts" : *ib.*, s. 35.

(*l*) Similarly if a legal estate was on 1st January, 1926, vested in an infant as a personal representative, trustee for sale or mortgagee jointly with a person of full age the legal estate will vest in the person of full age, with the mortgage debt, if any ; and a new trustee can, if there is a trust, be appointed in place of the infant : L. P. Act, 1925, 1st Sch., Pt. III, para. 4. The above Prec. can be adapted to any of such cases, but where there is a mortgage it will be recited in place of the conveyance.

Where the infant is solely entitled on 1st January, 1926, as personal representative, trustee for sale or mortgagee then the legal estate and mortgage debt, if any, will vest in the Public Trustee till new trustees are appointed in his place : *ib.*, para. 3 ; this does not apply where the legal estate is vested in an administrator *durante minore ætate* : *ib.*, para. 5.

after appointing the Vendors to be his executors and trustees, and after bequeathing certain legacies, which have been discharged, devised and bequeathed, all his real and personal estate not thereby otherwise disposed of to the Vendors Upon trust for his wife, H. G. (who died in the lifetime of the said testator) during her life (*m*) and after her death In trust for all or any his children or child who should attain the age of 21 years or being female marry under that age, and if more than one in equal shares :

Death of testator having had five children.

(2) The said testator died on the —— day of —— 1925, without having revoked or altered the said Will (which was on the ——day of——1925, duly proved at the—— Probate Registry by the Vendors), having had five children, and no more, namely, &c., all of whom have attained their respective ages of 21 years :

Vesting in the executors and trustees on the statutory trusts.

(3) All the funeral and testamentary expenses (including death duties), debts and legacies of the said testator have been discharged, (*n*) and by virtue of the Law of Property Act, 1925, 1st Schedule, Part IV, paragraph 1 (1), the property hereinafter described became vested in the Vendors upon the statutory trusts :

Agreement for sale.

(4) The Vendors, as trustees for sale, have agreed to sell the property hereinafter described, and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—— :

NOW in pursuance of the said agreement and in consideration of the sum of £—— on or before the execution hereof paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt, &c.) THIS DEED WITNESSETH as follows :—

Conveyance.

1. THE Vendors, As Trustees, hereby convey unto the Purchaser, ALL THAT, &c. (*Forms, Sec. II, p.* 471, *et seq.*)

TO HOLD unto the Purchaser in fee simple discharged from the trusts of the said Will.

[2 and 3. *Add acknowledgment Form No.* 4, *Sec. III, p.* 480, *and certificate Form No.* 8, *Sec., III, p.* 483, *if required.*]

IN WITNESS, &c.

Equitable tenant for life.

(*m*) If the wife had survived the legal estate would have vested in her as tenant for life : L. P. Act, 1925, 1st Sch., Pt. II ; and the executors as S. L. Act trustees (S. L. Act, 1925, s. 30 (3)), would have executed a vesting assent in her favour ; *ib.*, ss. 6 and 8.

Rights of personal representatives.

(*n*) If administration is not completed (L. P. Act, 1925, 1st Sch., Part IV, para. 1 (1)), the legal estate vests in the executors on the statutory trusts subject to their rights and powers for the purposes of administration, and they can sell under the Ad. of E. Act, 1925, ss. 2 and 39, as executors. The new protection afforded to purchasers against death duties does not apply unless the death occurs after 1925 : L. P. Act, 1925, s. 17 (1).

Death duties.

No. VI.

CONVEYANCE *by trustees for sale (formerly S. L. Act trustees) in whom the entirety of the settled land has on 1st January*, 1926, *become vested by reason of a limitation, in the settlement of the entirety, in favour of* TENANTS *in* COMMON. (*Legal Estate.*) (*o*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors), of the one part and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Settlement creating undivided shares which had fallen into possession on 1st January, 1926.

(1) Under a Settlement dated, &c., and made between, &c. (being a Settlement made in consideration of the marriage shortly afterwards solemnised between the said G. X., since deceased, and R. Y., afterwards R. X.), and by reason of the death of the said G. X., on the —— day of ——, 1924, having had four daughters, all of whom survived him, and no son, the property hereinafter described (with other property) immediately before the commencement of the Law of Property Act, 1925, stood limited To the use that the said R. X. should during the residue of her life receive a yearly jointure rentcharge of £——, and subject thereto To the use of S. X., T. X., U. X., and V. X. (the said four daughters) as tenants in common in tail in equal shares with cross remainders in tail between them, with divers remainders over: And by the Settlement the parties thereto of the —— part were appointed to be the trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890:

Appointment of S. L. Act trustees.

(2) By reason of the death of the said —— (*one of the original S. L. Act trustees*) and by virtue of an Appointment dated, &c., and made, &c. (whereby the Vendors were appointed to be the trustees of the recited Settlement in the place of the said —— deceased and of the said —— who retired from the trust) the Vendors became the trustees of the recited Settlement for the purposes of the said Acts:

Limitations to tenants in common.

(*o*) This case comes within L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (3). This applies whether or not the tenants in common, being either tenants for life or tenants in tail, as in the text, have dealt with their undivided shares. If there are no S. L. Act trustees on 1st January, 1926, the land vests in the Public Trustee on trust for sale till new trustees are appointed in his place: *ib.*

For the exercise of the powers of trustees for sale (L. P. Act, 1925, s. 28), there must be not less than two trustees save where a trust corporation is the trustee: *ib.*, s. 27.

(3) By virtue of the Law of Property Act, 1925, 1st Schedule, Part IV, paragraph 1 (3), the property hereinafter described (with other property) became vested in the Vendors in fee simple discharged from the said jointure rentcharge (which was not secured by a legal term of years absolute) upon the statutory trusts: (*p*) The vesting in the Vendors on trust for sale.

(4) The Vendors as trustees for sale, have agreed (*continue as in last Precedent, except that the words at the end of the habendum will be:* "Discharged from the limitations of the recited Settlement"). Agreement for sale.

IN WITNESS, &c.

No. VII.

CONVEYANCE *by the* PUBLIC TRUSTEE (*as trustee for sale*) *who has acquired the entirety of the land by reason of the subsistence of undivided shares under more than one settlement or title.* (*Legal Estate.*) (*q*)

THIS CONVEYANCE is made, &c., BETWEEN The Public Trustee, whose principal office is in Kingsway, in the County of London, of the one part, and A. B., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) At the date of the commencement of the Law of Property Act, 1925, C. D., of, &c., was seised in fee simple free from incumbrances of three undivided fourth shares in the property hereinafter described and in other property: Seisin of owner of three-fourths.

(2) Under a Settlement dated, &c., and made, &c., the remaining one fourth undivided share in the same property at the date aforesaid stood limited To the use of E. F. during his life, with divers remainders over: Settlement of the other fourth share

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(*p*) The jointure is shifted under the "statutory trusts" to the proceeds of sale and the rents and profits until sale: L. P. Act, 1925, s. 35. Even if the jointure had been protected by a legal term it would have been overreached by the conveyance, for the trustees (*ib.*, s. 28) have all the overreaching powers of a tenant for life: S. L. Act, 1925, s. 72. The overreaching powers of trustees for sale.

No more than two consents are ever required by a purchaser to the execution of a trust for sale (L. P. Act, 1925, s. 26 (1)), though regard must be had to wishes of the persons interested (*ib.*, sub-s. 3), as to consent to partitions: *ib.*, s. 28 (3), (4). Consents to the execution of a trust for sale.

(*q*) This is one of the cases within L. P. Act, 1925, 1st Sch., Pt. IV., para. 1, (4). Other examples are—First, where the land is vested absolutely and beneficially in more than four persons in undivided shares. Secondly, where the land is vested in any number of persons absolutely and beneficially in undivided shares subject to incumbrances affecting the undivided shares. And thirdly, in the case of settled land, where on 1st January, 1926, there are no trustees for the purposes of the S. L. Act, 1925. Cases where the entirety vests in the Public Trustee by reason of the existence of undivided shares.

In any case where the land vests in the Public Trustee provision is made by this part of the 1st Sch. for the appointment of trustees in his place.

Vesting in the Public Trustee on trust for sale.

(3) By virtue of the Law of Property Act, 1925, 1st Schedule, Part IV, paragraph 1 (4), the property hereinafter described (with other property) became vested in the Public Trustee in fee simple free from incumbrances on the statutory trusts:

Request to act.

(4) By a Memorandum dated, &c., under the hand of the said C. D. (a person interested in more than an undivided half of the land or the income thereof), the Public Trustee was requested to act as trustee for sale in relation to the said property under the implied statutory trusts and as appears from an endorsement on the said Memorandum has accepted the trust:

Agreement for sale.

(5) The Public Trustee as trustee for sale has agreed (*continue as in last Precedent, but one, but substituting* "the Public Trustee" *for* "the Vendors" *and saying at the end of the habendum* "discharged from all the limitations affecting the property").

IN WITNESS, &c.(*r*)

No. VIII.

CONVEYANCE by TRUSTEES *for sale* (*formerly S. L. Act trustees*) *who have acquired the land by reason of a limitation in undivided shares having taken effect after 1st January*, 1926. (*Legal Estate.*) (*s*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Vesting Deed.

(1) By a Vesting Deed dated, &c., and made, &c., the property hereinafter described (with other property) was vested or stated to be vested in T. L. in fee simple upon the trusts of a trust instrument therein referred to And by the Vesting Deed X. and Y. were stated to be the trustees of the Settlement for the

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Delivery of title deeds to trustees for sale.

(*r*) As the entire fee simple or term of years absolute will vest in the Public Trustee on trust for sale, it is conceived the court would order the title deeds relating to the legal title, other than those held by a mortgagee of the entirety, to be delivered to him to enable him to carry out the trust on behalf of all persons interested. To avoid an application to the court he could stipulate for the deeds to be handed over before accepting the trust.

Undivided shares falling into possession after 1925.

(*s*) Under S. L. Act, 1925, s. 36, the S. L. Act trustees are entitled, as in the text, to have an assent made to them on trust for sale. If under a shifting or cesser clause the life interest was determined otherwise than on a death, then the estate owner would have to convey to the S. L. Act trustees on trust for sale: *ib.* If the land is not settled land when the shares fall into possession, then L. P. Act, 1925, 1st Sch., Pt. IV, para. 2, applies, and the same result is arrived at. Until the land is vested in the persons entitled to call for the legal estate, the estate owner holds it on the "statutory trusts." These are defined again in S. L. Act, 1925, s. 36 (6).

purposes of the Settled Land Act, 1925, and the said T. L. was stated to have power during his life to appoint new trustees of the Settlement.

Deed declaring who are the S. L. Act trustees.

(2) By a Deed dated, &c., and made, &c., it was declared that the Vendors were the trustees of the Settlement, and by a Memorandum endorsed on the recited Vesting Deed it appears that the Vendors had at the date of the death of the said T. L. become the trustees of the Settlement for the purposes of the Settled Land Act, 1925 : (*t*)

Death of tenant for life and Letters of Administration.

(3) The said T. L. died intestate on the —— day of —— and Letters of Administration limited to the property comprised in the recited Vesting Deed were on the —— day of —— granted by the —— Probate Registry to the Vendors : (*u*)

Assent on trust for sale

(4) By an Assent in writing dated, &c., the Vendors assented to the vesting in themselves in fee simple of the property hereinafter described (with other property) Upon trust for sale, the net proceeds and the rents and profits until sale to be held on the trusts affecting the same under the trust instrument mentioned in the recited Vesting Deed ; (*v*) and notice of the said assent has been endorsed on the Letters of Administration aforesaid :

Agreement for sale.

(5) The Vendors as trustees for sale have agreed (*continue as in Prec. No. IV, of this Group, supra*).

IN WITNESS, &c.

No. IX.

CONVEYANCE *or* ASSIGNMENT *where land has after* 1925 *been expressed to be conveyed in undivided shares and accordingly become subject to a* TRUST *for* SALE. (*Legal Estate.*) (*w*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called

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Procedure on appointment of S. L. Act trustees.

(*t*) As to deeds declaring who are S. L. Act trustees : S. L. Act, 1925, ss. 35, 110 (2) (*c*) ; as to endorsements on vesting instruments : T. Act, 1925, s. 35 (1).

(*u*) As to administration or probate being granted to S. L. Act trustees as respects land settled previously to the death of the intestate or testator : Ad. of E. Act, 1925, ss. 10, 22-24 ; Jud. Act, 1925, s. 162.

Representation as respects settled land.

Assents on trust for sale.

(*v*) For a form of assent on trust for sale : L. P. Act, 1925, 5th Sch., Form No. 9. A person may convey or vest land in himself : *ib.*, s. 72 (3). In the case in the text the assent merely converts the personal representatives into trustees. A purchaser is not concerned to investigate the trust instrument to ascertain why the land has become subject to a trust for sale : Ad. of E. Act, 1925, s. 36 ; S. L. Act, 1925, s. 110 (5).

(*w*) Under L. P. Act, 1925, s. 34 (2), the land becomes vested in the first

the Vendors), of the one part, and K. L., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Lease or Conveyance to tenants in common.

(1) By a Lease dated, &c., and made between X. of the one part and the Vendors and Y. (in that order) of the other part, All that, &c., was expressed to be demised to the Vendors and the said Y. as tenants in common in equal shares for a term of —— years from the date thereof at a yearly rent of £—— and subject to the lessee's covenants and conditions therein contained:

[*or* By a Conveyance dated, &c., and made between X. of the one part and the Vendors and Y. (in that order) of the other part, in consideration of the sum of £—— the property hereinafter described was expressed to be conveyed to the Vendors and the said Y. in fee simple as tenants in common in equal shares:]

The vesting in the Vendors on trust for sale.

(2) By virtue of the Law of Property Act, 1925, section thirty-four, the property comprised in the recited Lease became vested in the Vendors alone, as joint tenants, on the statutory trusts for the term granted by that Lease:

[*or* By virtue of the Law of Property Act, 1925, section thirty-four, the property hereinafter described became vested in the Vendors as joint tenants on the statutory trusts:]

Agreement for sale.

(3) The Vendors as trustees for sale, have agreed to sell to the Purchaser the property comprised in the said Lease for the residue of the term thereby granted at the price of £——:

[*or* The Vendors, as trustees for sale, have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession, free from incumbrances, at the price of £—:]

NOW in pursuance of the said agreement, and in consideration of the sum of £—— on or before the execution hereof paid to the Vendors, as such trustees as aforesaid, by the Purchaser (the receipt of which sum the Vendors hereby acknowledge) THIS DEED WITNESSETH as follows:—

Assignment of lease.

1. THE Vendors, As Trustees, hereby assign unto the Purchaser,

ALL the property comprised in and demised by the recited Lease,

TO HOLD unto the Purchaser for the residue of the term granted by that Lease at the rent thereby reserved, and subject to the lessee's covenants and conditions therein contained,

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four lessees or grantees named on the "statutory trusts" defined in s. 35.

Mortgage to tenants in common.

If the conveyance takes the form of a mortgage it will only pass a mortgage term to the first four named mortgagees on a joint account. A trust or mortgage estate cannot be severed so as to create a tenancy in common: *ib.*, s. 36 (3).

[*or* 1. The Vendors, As Trustees, hereby convey unto the Purchaser, [Conveyance of freeholds.]

ALL THAT [*Forms Sec. II, p.* 471, *et seq.*]

TO HOLD unto the Purchaser in fee simple.]

2. COVENANT (C) referred to in section seventy-seven of the Law of Property Act, 1925, shall be herein incorporated. Covenant to pay rent, &c.

[3. *Add certificate Form No.* 8, *Sec. III. p.* 483 *supra, if required.*]

IN WITNESS, &c.

No. X.

CONVEYANCE *where land has after* 1925 *been devised or appointed to tenants in common and has accordingly become subject to a* TRUST *for* SALE. (*Legal Estate.*) (*x*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors), of the one part and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) X, of, &c., duly made his Will dated, &c., and thereby appointed the Vendors to be his Executors and the Trustees thereof for the purposes of the Settled Land Act, 1925: Will of devisor.

(2) The said X died on the —— day of —— without having revoked or altered his said Will, which was, on the —— day of ——, duly proved at the —— Probate Registry by the Vendors: Death and probate.

[*or* By a Conveyance, dated, &c., and made between R. T. and S. P., of the one part and the Vendors of the other part, the property hereinafter described was conveyed to the Vendors in fee simple Upon trust to sell the same and stand possessed of the net proceeds of sale and of the rents and profits until sale, upon the trusts and subject to the provisions upon and subject to which the same ought to be held by virtue of an appointment,(*y*) contained in the Will, dated, &c., and proved, &c., by X., who died on, &c.:] [Conveyance on trust for sale for giving effect to an appointment.]

(3) By an Assent in writing, dated, &c., the Vendors assented to the vesting in themselves in fee simple, the property hereinafter described Upon trust for sale, the net proceeds and rents and profits until sale to be held on the trusts on which the same Assent on trust for sale.

(*x*) Under L. P. Act, 1925, s. 34 (3), this passes the entirety to the S. L. Act trustees of the will or, if none, to the executors on the statutory trusts. It does not bring the will on to the title for either the estate owner who owns the land affected by the power of appointment or the executors of the testator, in the case of a devise, will convey or assent to the entirety vesting on trust for sale: see also L. P. (Amend.) Act, 1924, 9th Sch., para. 3. Wills operate only in equity and do not come on the title to the legal estate.

(*y*) See next page.

ought to be held by virtue of an appointment,(*y*) contained in the Will of the said X. hereinbefore mentioned And notice of the said Assent has been endorsed on the recited Probate :

Agreement for sale.

(4) The Vendors, as trustees, for sale have agreed (*continue as in Prec. No. IV of this Group, supra*).

IN WITNESS, &c.

No. XI.

RELEASE *by* ONE JOINT TENANT, *beneficially entitled, to the* OTHER *on a* SALE. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., Spinster (hereinafter called the Vendor), of the one part, and C. D., of, &c., Spinster (hereinafter called the Purchaser), of the other part : WHEREAS :—

Title of the joint tenants under an assent on trust for sale.

(1) By an Assent in writing, dated, &c., X. and Y. (who were the executors of R. T., having proved his Will, dated, &c., at the —— Probate Registry, on the —— day of ——), assented to the vesting of the property hereinafter described (of which the said testator was seised for an estate in fee simple in possession free from incumbrances, at his death) in the Vendor and Purchaser in fee simple Upon trust (*z*) to sell the same, and stand possessed of the net proceeds and the rents and profits until sale in trust for themselves as joint tenants And notice of the said Assent was endorsed on the Probate hereinbefore mentioned :

Agreement for sale.

(2) The Vendor has agreed to sell all her interest in the property hereinafter described to the Purchaser free from incumbrances at the price of £—— :

Appointments only take effect in equity.

(*y*) Appointments under a power can only transfer or create equitable interests (L. P. Act, 1925, s. 1 (7)) ; as to giving effect to equitable interests : *ib.*, s. 3 ; S. L. Act, 1925, s. 16.

Joint tenants hold on trust for sale.

(*z*) Joint tenants beneficially interested (not being tenants for life) hold their legal estate on trust for sale (L. P. Act, 1925, s. 36) ; but this does not sever their joint tenancy in the proceeds of sale (*ib.*, sub-s. (1)) ; though their legal joint tenancy cannot be severed so as to create a tenancy in common, power is expressly reserved for one to release to the other : *ib.*, sub-s. (2). They could have severed their joint tenancy in the proceeds of sale (*ib.*) and have directed the executors, in the assent, to have provided for the net proceeds being held in shares ; express power is also given to sever by notice the joint tenancy in the proceeds of sale : *ib.*

Equitable severance by notice.

Joint tenants for life.

An undivided share in land cannot be " settled land " ; there will always be a trust for sale of the entirety. A " trust estate " including settled land, cannot be severed (*ib.*) ; but tenants for life holding as joint tenants can, for the period of the joint lives, sever their equitable interests in the income (*ib.*) ; this does not create undivided shares in the settled land, hence no trust for sale arises and the land remains settled land.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys and releases unto the Purchaser Release by co-owner.

ALL THAT the estate and interest of the Vendor in All those, &c. (*See Forms, Sec. II, p.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple and to the intent that the entirety shall be vested in her discharged from the said trust for sale. [*Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

No. XII.

ASSIGNMENT *by the* OWNERS *of* TWO SHARES *in* MONEY *to arise under a* TRUST *for* SALE *of* FREEHOLD LAND, *the* OWNER *of the remaining* THIRD SHARE *being the* PURCHASER. (*Equitable Interest.*)

THIS ASSIGNMENT is made, &c., BETWEEN A. H., of, &c. (*one Vendor*), of the 1st part, C. H., of, &c. (*the other Vendor*), of the 2nd part, and E. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:— Parties.

(1) G. H., being at his death seised in fee simple in possession free from incumbrances of the property hereinafter described, duly made his Will dated the —— day of ——, and thereby, after appointing X. and Y. to be his executors and trustees, devised all his real estate (including the property hereinafter described) to them Upon trust to pay the rents and profits thereof to his widow, J. H. (who died during the lifetime of the said testator) (*a*) during her life, and after her death to sell the same and to stand possessed of the net proceeds of such sale In trust for all or any his children or child living at his death who should attain the age of twenty-one years, and if more than one in equal shares: Will creating trust for sale.

(2) The said testator died on the —— day of ——, 1926, without having revoked or altered his said Will (except by a Death of testator and probate.

(*a*) Had the widow survived, the executors would, by a vesting assent, have assented to the fee simple vesting in her and have stated that they were the trustees of the settlement for the purposes of the S. L. Act, 1925, for a future trust for sale is sufficient to constitute them such: S. L. Act, 1925, s. 30 (1) (iv). On her death representation would have been granted to the S. L. Act trustees, specially limited to the settled land, as her executors or administrators for that purpose. Right of equitable tenant for life to a vesting assent.

Codicil thereto dated the —— day of ——, which did not affect the aforesaid devise of his real estate), and which said Will and Codicil were on the —— day of —— duly proved at the Principal Probate Registry by the said X. and Y.:

Interests of testator's children.

(3) The said testator had five children, and no more, namely, two children who died in his lifetime and the said A. H., C. H., and the Purchaser, who have attained their respective ages of twenty-one years, and accordingly are each entitled to a one third share in the proceeds of sale to arise from the property hereinafter described:

Agreement for sale.

(4) The said A. H. and C. H. have agreed to sell to the Purchaser their respective shares in the money to arise from the sale of the property hereinafter described and in the rents and profits thereof accruing after the death of the said testator until sale at the price of £——:

Arrangement to take a separate assent from the executors.

(5) Arrangements have been made between the said X. and Y. as such executors as aforesaid and the Purchaser (with the privity of the said A. H. and C. H.) that the said X. and Y. (being satisfied that reasonable arrangements have been made for the discharge of the duties which became payable in respect of the said property on the death of the said testator) should, immediately after the execution of this Assignment, assent in writing to the property hereinafter described vesting solely in the Purchaser in fee simple:(*b*)

NOW THIS DEED WITNESSETH as follows:—

Release of shares in proceeds of sale of freeholds.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid in moieties by the Purchaser to the said A. H. and C. H. (the receipt of which sums of £—— and £—— the said A. H. and C. H. hereby respectively acknowledge), each of them the said A. H. and C. H. as to his one third share, and As Beneficial Owner, hereby assigns and releases unto the Purchaser

All those the two respective third shares of the said A. H. and C. H. in the money to arise from the sale of All those, &c. (*describe the particular land*) devised by the recited Will of the said G. H. and in the rents and profits thereof which have accrued since the death of the said testator And all other (if any) the interests of the said A. H. and C. H. in the said property,

Assents create a curtain.

(*b*) For a form of assent see L. P. Act, 1925, 5th Sch., Form No. 8; this wil keep all the equitable interests disclosed in the assignment off the title: Ad. of E. Act, 1925, s. 36. An assent cannot be postponed if reasonable arrangements are made for the discharge of death duties: *ib.*, sub-s. 10.

TO HOLD unto the Purchaser absolutely or in fee simple.

2. THE Purchaser hereby covenants with the said A. H. and C. H. that the Purchaser and his estate and effects will at all times hereafter save harmless and keep indemnified the said A. H. and C. H. and their respective estates and effects from all claims and costs in respect of duties which may have become payable on the death of the said testator so far as those duties may be a charge on or attributable to the property hereinbefore described. Covenant to pay duties.

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

No. XIII.

CONVEYANCE *of* FREEHOLDS *by a* SURVIVING PARTNER *and a* NEW TRUSTEE *appointed in place of a* DECEASED PARTNER. (*Legal Estate*).(*c*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (*surviving partner*), and C. D., of, &c. (*new trustee*) (hereinafter called the Vendors), of the one part and E. F., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS :— Parties.

(*c*) S. 20 (2) of the Partnership Act, 1890, provided that the legal estate in any land forming partnership property should devolve according to the nature and tenure thereof and the general rules of law applicable thereto, but in trust so far as necessary for the persons beneficially interested. Before 1926 it has been usual to insert in a conveyance to partners a provision enabling the survivors to dispose of the property and give valid receipts without the concurrence of the personal representative of a deceased partner. Where this provision was omitted the personal representatives had to join to make title, save for winding up purposes: *Re Bourne* [1906], 2 Ch. 427. Partnership property, devolution of, under the old law

Section 22 of the Act converts land held as partnership property into personal estate, unless there is a contrary intention, see Dart, 7th ed., 964, *et seq.* As to the principle regulating the beneficial devolution of land held for a partnership or other common object, see *Re Wilson* [1893], 2 Ch. 340; 62 L. J. Ch. 781; see also *Davis* v. *D.* [1894], 1 Ch. 393; 63 L. J. Ch. 219; *Wray* v. *W.* [1905], 2 Ch. 349; 74 L. J. Ch. 687.

Now all partners who hold a legal estate beneficially as joint tenants (L. P. Act, 1925, s. 36), and all partners who formerly held as tenants in common, not being more than four (*ib.*, 1st Sch., Pt. IV, para. 1 (2)), where the entirety was acquired before 1926, will take as joint tenants; if there were more than four tenants in common the land will vest in the Public Trustee on the statutory trusts till new trustees are appointed: *ib.*, para 1 (4). If the land is acquired after 1925 it will vest in the first four grantees as joint tenants on the statutory trusts: *ib.*, s. 34 (2), see also s. 3 (1) (b) (ii) proviso. After 1925 not more than four trustees can hold land on trust for sale (T. Act, 1925, s. 34 (2)), subject to the exceptions, not applicable to partnership land, in sub-s. 3. New law of devolution of legal estate in partnership property.

Partnership.

(1) At the date of the execution of the Conveyance hereinafter recited the said A. B. was carrying on business in partnership with J. K. (since deceased):

Conveyance to partners.

(2) By a Conveyance dated the —— day of ——, 1924, and made between —— of the one part, and the said A. B. and J. K. of the other part, the property hereinafter described was conveyed to the said A. B. and J. K. in fee simple as joint tenants and as part of their partnership property:

Vesting of the property on trust for sale.

(3) By virtue of the Law of Property Act, 1925, section thirty-six, the said property became vested in the said A. B. and J. K. on trust for sale:

Death, and Will of deceased partner.

(4) The said J. K. died on the —— day of ——, 1927, having by his Will appointed the said C. D. and other persons to be his executors, who on the —— day of —— duly proved the same at the Principal [—— District] Probate Registry:

Appointment of a new trustee.

(5) By an Appointment dated the —— day of ——, 1927, and made between the said A. B. of the one part and the said C. D. of the other part, in exercise of the power for this purpose conferred by the Trustee Act, 1925, the said A. B. appointed the said C. D. to be a trustee of the recited Conveyance in the place of the said J. K. deceased and the said property was vested in the Vendors in fee simple on trust for sale as aforesaid:(*d*)

Agreement for sale.

(6) The Vendors as trustees for sale have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Conveyance by surviving partner and new trustee.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees, hereby convey unto the Purchaser,

All that, &c. (*Forms in Sec. II, p.* 471, *et seq.*),

To hold unto the Purchaser in fee simple.

[2. *Add, if required, acknowledgment, Form No.* 4, *Sec. III, p.* 480.]

In witness, &c.

At least two trustees required.

(*d*) A sole trustee for sale, not being a trust corporation, cannot give a valid receipt for the purchase-money (L. P. Act, 1925, s. 27 (2)); the purchaser is not concerned with the application of the money. *ib.*, sub-s. 2. As to trustees receipts: T. Act, 1925, s. 14.

No. XIV.

CONVEYANCE *of* FREEHOLDS *to give effect to a* SALE *of* TRUST PROPERTY *by the* BENEFICIARIES *to* ONE *of the* TRUSTEES. (*Legal Estate.*) (*e*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*the trustees for sale*, hereinafter collectively called the Vendors), of the 1st part, E. F., of, &c., Widow (*tenant for life*), of the 2nd part, G. F., of, &c., and K. F., of, &c. (*persons entitled in reversion*, hereinafter called the Reversioners), of the 3rd part, and the said C. D. (hereinafter called the Purchaser), of the 4th part: WHEREAS:—

Will devising the land to the Vendors upon trust for sale.

(1) M. F., being at his death seised of the property hereinafter described for an estate in fee simple free from incumbrances, duly made his Will, dated, &c., and thereby, after appointing the Vendors to be his trustees and executors, devised to them his real estate Upon trust to sell the same and to invest the net proceeds of sale as therein mentioned and to pay the annual income thereof and the rents and profits of the premises until sale to the said E. F., his widow, during her life, and after her death (as to both capital and income) In trust for all or any his children or child living at his death who should attain the age of twenty-one years, and if more than one in equal shares:

Death of testator and probate.

(2) The said testator died on the —— day of ——, 1926, without having revoked or altered his said Will, which was on the —— day of —— duly proved at the —— Probate Registry by the Vendors:

Assent on trust for sale.

(3) By an Assent in writing, dated, &c., the Vendors assented to the property hereinafter described vesting in themselves in fee simple on trust for sale, the net proceeds and the rents and profits until sale to be held on the trusts on which the

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(*e*) As a general rule the title to equitable interests should not be recited; this Precedent gives one of the exceptions, for if two trustees for sale sold to one of themselves a doubt would arise on the title; this could be removed by obtaining an order of the court authorising the sale.

Recitals of title to equitable interests.

Under L. P. Act, 1925, s. 72 (4), two or more trustees can convey property to one of themselves, hence the legal estate passes by such a conveyance, but the proviso to this sub-section leaves it open for the beneficiaries to apply to have the conveyance set aside.

Conveyance by trustees to one of themselves.

To override any claim for duty on the death of the testator or his widow the purchase-money should be paid to the trustees for sale: L. P. Act, 1925 ss. 16 (2), (6); 17 (1).

Death duties.

same ought to be held under the recited Will; and a Memorandum of the said Assent was endorsed on the Probate aforesaid:

Number of children.

(4) The said testator had two children, and no more, namely, the Reversioners, both of whom have attained the age of twenty-one years:

Agreement for sale.

(5) The said E. F. and the Reversioners have agreed to sell the property hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £——, notwithstanding that he is a trustee for sale thereof,(*f*) the said E. F. and the Reversioners being satisfied from their own knowledge and from independent inquiries and valuations made by them or by their direction that the said purchase-money is the full market value of the said property:

Direction to trustees to give effect to the sale.

(6) The said E. F. and the Reversioners have directed the Vendors to give effect to the said sale and to give a receipt for the purchase-money in like manner as if the sale had been made under the trust for sale aforesaid to a third party:

Conveyance and release.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees, and by the direction of the said E. F. and the Reversioners, each of them according to her or his beneficial interest only directing As Beneficial Owner, hereby convey, and the said A. B. (by the like direction), As Trustee, hereby releases unto the Purchaser,

All those, &c. (*Forms in Sec. II, p.* 471, *et seq.*),

To hold unto the Purchaser in fee simple, discharged from all the trusts, powers, and provisions of the recited Will.

Acknowledgment.

2. The Vendors do and the said A. B. doth hereby acknowledge the right of the Purchaser to production of the recited Probate (*g*) and Assent and to delivery of copies thereof.

[3. *Add Certificate Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.

Fiduciary relationship.

(*f*) Though a trustee for sale cannot purchase from himself, there is no rule which precludes him from purchasing from his beneficiaries, but before he can do so the fiduciary relation must be actually or impliedly determined: Lewin on Trusts, 12th ed., 568, *et seq.*; Dart, 7th ed., 50.

Endorsements on probates.

(*g*) The probate should be included in the acknowledgment on account of the endorsements: Ad of E. Act, 1925, s. 36.

GROUP E.—CONVEYANCES ON SALES UNDER THE SETTLED LAND ACT, 1925.(a)

No. I.

CONVEYANCE *of* FREEHOLDS *by a* TENANT *for* LIFE *or* LIMITED OWNER *under a* WILL *where the* PURCHASE-MONEY *is paid to S. L. Act* TRUSTEES. VARIATIONS *where the* TESTATOR *died after* 1925, *or where the* MONEY *is paid into* COURT. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (*tenant for life and estate owner*, hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Vesting deed for giving effect to a Will of a testator dying before 1926.

(1) By a Vesting Deed, dated, &c., and made between the Trustees of the one part, and the Vendor of the other part, the Trustees declared that the property hereinafter described (with other property) was vested in the Vendor in fee simple, and the Vendor declared that he would stand possessed of the said property Upon the trusts and subject to the powers and provisions upon and subject to which under the Will, dated, &c., and proved, &c., of John B., who died on the —— day of ——, 1925, or otherwise the same ought to be held from time to time and it was thereby declared that the Trustees were the Trustees of the Settlement created by the said Will for the purposes of the Settled Land Act, 1925.

Counsel's Certificate.

(2) By Counsel's Certificate,(b) dated, &c., it was certified that at the date of the recited Vesting Deed First, the land thereby

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Express powers of sale, and general powers of appointment.

(a) Title can no longer be made under an express power of sale given to trustees, &c., for such a power is exercisable only by a tenant for life or statutory owner as an additional power: S. L. Act, 1925, ss. 108 (2), 109. A power of appointment only takes effect to create equitable interests (L. P. Act, 1925, s. 1 (7)), and as a purchaser is entitled to have title made without the concurrence of a person entitled to an equitable interest when it can be so made (*ib.*, s. 42 (1)), this precludes title being made in this way.

"Tenant for life" and "statutory owner."

"Tenant for life" includes the persons having the powers of a tenant for life (S. L. Act, 1925, ss. 19-22; 24-28; 117 (1) (xxviii)); and as to the meaning of "statutory owner": *ib.* ss. 23, 26, 117 (1) (xxvi).

As to who are S. L. Act trustees: *ib.*, ss. 30-34; 2nd Sch., para. 3 (3).

In the case of registered land, the conveyance will always be made by the registered proprietor (L. R. Act, 1925, s. 110 (5)), subject to such restriction (if any) as may be required by the nature of the settlement. The conveyance will be by transfer in the ordinary form; the restrictions must be complied with. There will be no recitals and none of the forms in this group will apply.

S. L. Act trustees.

(b) See S. L. Act, 1925, s. 110 (2) (i) (ii) (iii), and General Conditions of 1925, cl. 25. Evidence of seisin and actual possession should be proved to counsel's satisfaction if necessary by a statutory declaration.

expressed to be vested in the Vendor (including the property hereinafter described and the fee simple thereof free from incumbrances) was comprised in the said Will Secondly, that the Vendor was the person in whom the said property ought to be vested as tenant for life And Thirdly, that the Trustees were the properly constituted Trustees of the Settlement created by the said Will.(*c*)

(*c*) The conveyance on sale, or mortgage, &c., by a tenant for life or person having the powers of a tenant for life or statutory owner operates to pass the legal fee simple or term of years absolute, constituting the settled land, discharged from all the limitations effecting it, subject only as mentioned in S. L. Act, 1925, s. 72. Thus the conveyance will take effect subject to legal mortgages having priority to the settlement, to legal leases, fee farm grants (*i.e.*, reserving legal rentcharges) and legal easements created for money's worth, also to equitable interests protected by registration under L. C. Act, 1925, but not including annuities, limited owner's charges or general equitable charges, which are shifted to the purchase-money or the investments representing it.

Effect of conveyance under S. L. Act, 1925.

Points to be attended to by a Purchaser or Mortgagee when the transaction is carried out under the S. L. Act.

On a conveyance to a purchaser or mortgagee under the S. L. Act, 1925, the following are some of the principal points to be attended to :—

(1) That the purchase or mortgage money be paid either to a trust corporation or to at least two trustees, being individuals, or into court : S. L. Act, 1925, ss. 30-34, 75, 94, 95.

S. L. Act trustees must be at least two or a trust corporation.

(2) Whether capital money is paid to trustees or into court (if into court there must be S. L. Act trustees of the settlement : *Hatten* v. *Russell* (1888), 38 Ch. D. 334, 335 ; 57 L. J. Ch. 425 ; *Re Fisher and Grazebrook* [1898], 2 Ch. 660 ; 67 L. J. Ch. 613) except where the sale is made by personal representatives (*ib.*, ss. 26 (minorities) and 110 (3)), but if no capital money arises (*e.g.*, on a lease or exchange) the lessee or other purchaser may complete though there are no trustees (s. 110 (4)) ; see also as to short leases : s. 42 (5). As to compound settlements, see ss. 1 (1) proviso (title must always be made under the compound settlement), 31 and 32. The trustees need not have been appointed more than one month before the conveyance, so as to be capable of having had due notice under S. L. Act, 1925, s. 101, for notice may have been waived under that section. A purchaser acting in good faith is not concerned to inquire whether notice has been given · *Duke of Marlborough* v. *Sartoris* (1886), 32 Ch. D., at p. 623 ; 56 L. J. Ch. 70.

Compound settlements.

Notices to trustees.

Mansion house and park.

(3) In the case of a purchase see that the property is not a mansion house, park, &c., within S. L. Act, 1925, s. 65, or, if within that section then if the settlement came into operation before 1926, that the necessary consent or order has been obtained. If the settlement came into operation after 1925 then no consent or order will be required unless the settlement expressly provides for it. When setting out the additional powers in a vesting instrument it should thereby appear whether or not any consent or order is requisite. The consent or order should be mentioned in the conveyance. The consent need not be in writing (*Gilbey* v. *Rush* [1906], 1 Ch. 11 ; 75 L. J. 32); there may be more than one principal mansion house in the same settlement : *ib.*, and see *Re Wyhes* [1908], 1 Ch. 593 ; 77 L. J. Ch. 319. A "park" includes a private park . *Pease* v. *Courtney* [1904], 2 Ch. 503 ; 73 L. J. Ch. 760.

Tenant for life, and statutory owner.

(4) As to who are "tenants for life" (S. L. Act, 1925, ss. 19—28,) this expression includes persons who have the statutory powers (*ib.*, s. 117 (1) (xxviii)), but not "statutory owners"; these are the persons (generally but not always the trustees of the settlement) who under s. 23 have the powers of a tenant for life, when there is no tenant for life (*e.g.*, where there is a discretionary

[*Or where the testator who created the Settlement by his Will dies after* 1925, *the recitals will be as follows* —

(1) By a Vesting Assent, dated, &c., X. and Y., as the Personal Representatives of John A., who died on the —— day of ——, 1926, and whose Will, dated, &c., was proved by them on the —— day of —— (being at his death seised of the property hereinafter described in fee simple free from incumbrances), assented to the vesting of that property in the Vendor in fee simple to be held by him upon the trusts declared concerning the same by the said Will And the said X. and Y. thereby declared that they were the trustees of the Settlement created by the said Will for the purposes of the Settled Land Act, 1925, and that the power of appointing new trustees of the Settlement was vested in the Vendor during his life And a Memorandum of the said Assent was endorsed on the Probate of the said Will. Vesting Assent.

(2) As appears from a Deed of Declaration, dated, &c., and made between the Vendor of the 1st part, the said X. and Y. (who retired from the trust) of the 2nd part, and the Trustees of the 3rd part (a Memorandum whereof is endorsed on the recited Assent) the Trustees became and are the present trustees of the Settlement for the purposes of the Settled Land Act, 1925 :] Deed of declaration as to trustees.

trust of the income for the benefit of two or more persons) and include the trustees of the settlement who during a minority have the powers under s. 26 ; for an infant can no longer be a tenant for life for the purposes of the Act, he could not act as trustee of the settled land.

Trusts for sale are not dealt with by the S. L. Act, 1925, but are governed by L. P. Act, 1925 ; accordingly as the entirety in all land held in undivided shares is subjected to a trust for sale, it is not possible to have a settlement of an undivided share in land. Trusts for sale and undivided shares.

If it is desired to settle an undivided share the land must be vested in trustees for sale and a share in the proceeds can be settled for entailed interests or otherwise. If settled land comes to be held in undivided shares after 1925, then S. L. Act, 1925, s. 36, supplies the trust for sale.

(5) Where a testator, who makes a settlement by his will, dies after 1925, his land will devolve on his general executors under Ad. of E. Act, 1925, ss. 1 and 3. For a form of assent applicable to this case : S. L. Act, 1925, 1st Sch., Form No. 5. Only where the settlement was created before the testator's death and not by his will, do ss. 22-24 (relating to special executors) of Ad. of E. Act, 1925, apply. The executors can allow the tenant for life to take possession of the land or of the rents and profits before assenting (*ib.*, s. 43), they must not postpone the assent merely because death duties remain to be paid : *ib.*, s. 36 (10) ; see also S. L. Act, 1925, s. 8 (6). For the procedure in the case of settlements made by will . *ib.*, ss. 6 and 8. Charges affecting the property of the deceased will be payable primarily out of the property charged: Ad. of E. Act, 1925, s. 35. As to the right to follow property otherwise than in the hands of a purchaser : *ib.*, s. 38 (1). As to the right of the court to enforce equitable interests : *ib.*, s 38 (2) ; S. L. Act, 1925, s. 16. For the statutory indemnity against rent and covenants (T. Act, 1925, s. 26) ; and for the power to advertise for creditors : *ib.*, s. 27. Devolution on death of testator settlor.

Agreement for sale.

(3) The Vendor, as such trustee and estate owner as aforesaid has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— (*d*)

NOW THIS DEED WITNESSETH as follows :—

Conveyance by tenant for life.

1. In pursuance of the said agreement and in consideration of the sum of £—— by the direction of the Vendor [on or before the execution of these presents (*e*)] paid by the Purchaser to the Trustees (*f*) as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge) the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Act, 1925, and of all other powers and As Trustee (*g*) hereby conveys unto the Purchaser

Parcels.

All those, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum.

To hold unto the Purchaser in fee simple, discharged as provided by section seventy-two of the Settled Land Act, 1925.

Acknowledgment as to documents.

2. The Vendor (*h*) hereby acknowledges (*continue as in Form No.* 4, *Sec. III, p.* 480).

[*Add Form No.* 8, *Sec. III, p.* 483, *if required.*)

In witness, &c.

(*Add Schedules of property and documents.*)

Payment of purchase-money into court.

(*d*) If the purchase-money, which is unusual, is to be paid into court under S. L. Act, 1925, s. 75 (1), the following recital should be added after the recital of the agreement for sale :—

(4) The Vendor desired that the said sum of £—— should be paid into court and accordingly the Purchaser has, pursuant to an Order of the Chancery Division of the High Court of Justice made on the —— day of —— by the Honourable Mr. Justice —— in Chambers, paid the said sum of £—— into court to the credit of "In the matter of the Will dated the —— day of —— of John B., deceased, proceeds of sale of certain freehold property situated at —— and In the matter of the Settled Land Act, 1925," which payment the Vendor hereby acknowledges.

For form of order : Seton, 7th ed., 1770.

Price.

The sale must be made at the best price obtainable (S. L. Act, 1925, s. 39), not at a price to be fixed by arbitration, see *Re Earl of Wilton's S. E.* [1907], 1 Ch. 50 ; 76 L. J. Ch. 37. But the aggregate price for an option may be made apportionable by reference to arbitration : *ib.*, s. 51 (3). Power is given to sell in consideration of the reservation of a perpetual or terminable rent : *ib.*, s. 39.

(*e*) The words in square brackets will be used where a deposit has been paid.

(*f*) If the money is paid into court say "so paid into court as aforesaid" after the words "sum of £——" and omit the words down to "hereby acknowledge."

(*g*) See General Conditions of 1925, cl. 25.

(*h*) The tenant for life has the legal estate either under L. P. Act, 1925,

No. II.

CONVEYANCE *of* FREEHOLDS (TRUSTEES *having been appointed by the* COURT) *by a* TENANT *for* LIFE *or* LIMITED OWNER *under a* SETTLEMENT; *Variations where a* RESETTLEMENT *was made before* 1926. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser) of the 3rd part: WHEREAS:— Parties.

(1) By a Vesting Deed, dated the —— day of —— 1926, and made between the Vendor of the 1st part, Jane R., spinster (afterwards Jane B.), of the 2nd part, and X. and Y. of the 3rd part, in consideration of the marriage shortly afterwards solemnised between the Vendor and the said Jane R., the Vendor declared First that the property hereinafter described (with other property) was vested in him in fee simple Upon the trusts declared concerning the same by a trust instrument of even date therewith Secondly that the said X. and Y. were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 And thirdly that the power of appointing new trustees of the Settlement was vested in the Vendor during his life: Vesting Deed made at the date of the Settlement.

(2) By a Deed, dated, &c., and made between the Vendor of the one part and the Trustees of the other part (being the parties directed to execute a deed of declaration pursuant to section thirty-five of the Settled Land Act, 1925, under an Order of the High Court of Justice, Chancery Division, made on the, &c., [by the Honourable Mr. Justice ——] In the matter of the —— Estate in the County of —— settled by the trust instrument hereinbefore mentioned; And in the matter of the Settled Land Deed of Declaration on appointment of new trustees by the court.

1st Sch., Pt. II, or by virtue of the vesting instrument, hence has the right to the deeds relating to the legal estate and will be the proper person to give the acknowledgment; he will only give an undertaking where he is beneficially entitled to the fee simple subject to equitable interests. General Conditions of 1925, cl. 25 (4). Custody of title deeds by tenant for life.

The S. L. Act trustees are not liable for the vesting instrument and other documents of title relating to the settled land (except securities for capital money) being placed in the possession of the tenant for life, but where, if the settlement were not disclosed, it would appear that he was absolute owner, they will endorse notice of the last vesting instrument on one of the title deeds before handing them over: S. L. Act, 1925, s. 98. Indemnity to trustees, endorsement of notice.

Act, 1925) it was declared that the Trustees were the Trustees of the Settlement for the purposes of the said Act And a Memorandum of the said Deed of Declaration has been duly endorsed on the recited Vesting Deed :

[*Or where a compound Settlement was subsisting on* 1*st January*, 1926, *substitute the following recitals* —

Vesting Deed made in 1926 to give effect to a compound settlement.

(1) By a Vesting Deed dated the —— day of —— 1926, and made between X. and Y. of the one part and the Vendor of the other part, the said X. and Y. declared that the property hereinafter described (with other property) was vested in the Vendor in fee simple Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held under a compound settlement consisting of First a Settlement, dated, &c., and made between, &c. Secondly a Disentailing Assurance, dated, &c., and made between, &c. (duly enrolled within six months at the Central Office) And Thirdly a Resettlement, dated, &c., and made between C. B. (since deceased) of the 1st part, the Vendor of the 2nd part, and the said X. & Y. of the 3rd part :

And the said X. and Y. also declared that they were the trustees of the Settlement for the purposes of the Settled Land Act, 1925, they having been appointed to be trustees of the said Compound Settlement for the purposes of the Settled Land Acts, 1882 to 1890, by an Order of the Chancery Division of the High Court of Justice made on, &c. And also that there were no persons nominated for the purpose of appointing new trustees within the meaning of section sixty-four, sub-section (2), paragraph (*a*) of the Trustee Act, 1925 :

Counsel's Certificate

(2) By Counsel's Certificate, dated, &c., it was certified that at the date of the recited Vesting Deed first the land thereby expressed to be vested in the Vendor was comprised in the said Compound Settlement, secondly that the Vendor was the person in whom the said property ought (as tenant for life) to be vested in fee simple, and thirdly that the said X. and Y. were the duly constituted trustees of the said Compound Settlement :

Deed of Declaration.

(3) By a Deed of Declaration, dated, &c. (a memorandum whereof has been endorsed in the said Vesting Deed), and made between the said X. and Y. of the 1st part, the Vendor of the 2nd part, and the Trustees of the 3rd part, it was declared that the Trustees had become and were the trustees of the said Compound Settlement for the purposes of the Settled Land Act, 1925 :]

[*Recite the Agreement for Sale, and continue the operative parts as in the last Precedent.*]

IN WITNESS, &c.(*i*)

No. III.

CONVEYANCE *of* FREEHOLDS *by a* TENANT *for* LIFE, *who has succeeded* (*after* 1925) *on the death of a prior tenant for life or by the operation of a* NAME *and* ARMS *or* SHIFTING *Clause, or by reason of the* SURRENDER *of the life interest to the next remainderman.* (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of, the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Vesting Deed to give effect to a Settlement made before 1926.

(1) By a Vesting Deed (hereinafter called the Principal Vesting Deed) dated the —— day of ——1926, and made between X., of, &c., and Y., of, &c., of, the one part, and T. L. of the other part, the said X. and Y. declared First that the property hereinafter described (with other property) was vested in the said T. L. in fee simple Upon the trusts upon which the same ought to be held under a Settlement, dated, &c., and made, &c. Secondly that they were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 And thirdly that the said T. L. had power to appoint new Trustees of the Settlement:

Counsel's Certificate.

(2) By Counsel's Certificate dated the —— day of —— 1926, it was certified that at the date of the Principal Vesting Deed First the land thereby expressed to be vested in the said T. L. was comprised in the said Settlement Secondly that the said T. L. was the person in whom the said property ought (as a person having the statutory powers of a tenant for life) to be vested in fee simple Thirdly that the said X. and Y. were the then trustees of the said Settlement And fourthly that the said T. L. was then the person having power to appoint new trustees of the said Settlement:

Death of first tenant for life and probate.

(3) The said T. L. died on, &c., and on the —— day of —— 19—, the said X. and Y. proved his Will, dated, &c., at the ——

(*i*) Having regard to S. L. Act, 1925, s. 22, 4th Sch., para. 8 (restoration of life interests) and ss. 31-33 (compound settlements) it will seldom be necessary after 1925 to apply to the court under s. 34 to appoint trustees of a compound settlement.

Trustees of Compound Settlements.

Probate Registry, the said probate being limited to the settled land comprised in the Settlement hereinbefore mentioned:

Vesting Assent.

(4) By a Vesting Assent, dated, &c. (made supplemental to the Principal Vesting Deed) the said X. and Y. as Personal Representatives assented to the vesting of the said property in the Vendor in fee simple Upon the trusts of the Settlement referred to in the Principal Vesting Deed and declared First that they were the trustees of the Settlement And secondly that the Vendor had power to appoint new trustees thereof:

Variations where the life interest determines in the lifetime of the tenant for life.

[*Or where the life interest of T. L. determines in his lifetime substitute the following recitals for* (3) *and* (4), *supra, see S. L. Act*, 1925, *ss.* 7-8. *If a sufficient time has elapsed since the date of the first principal Vesting Deed* (1) *the recitals should commence either with the Vesting Assent* (4) *supra, or with the conveyance next recited.*

(3) By a Conveyance, dated, &c., and made between the said T. L. of the 1st part, the said X. and Y. of the 2nd part, and the Vendor of the 3rd part, pursuant to sections seven and eight of the Settled Land Act, 1925, the said T. L. conveyed the said property to the Vendor in fee simple Upon the trusts upon which the same ought to be held under the Settlement mentioned in the Principal Vesting Deed, and it was thereby declared that the said X. and Y. were the trustees of the Settlement for the purposes of the said Act and that the Vendor had power to appoint new trustees thereof:]

Deaths of trustees.

(4) *or* (5) The said X. and Y. died respectively on the —— day of —— and the —— day of —— [*The deed of Declaration and Endorsement next recited is sufficient evidence without proving the deaths.*]

Deed of Declaration respecting S. L. Act trustees.

(5) *or* (6) By a Deed of Declaration, dated, &c. (a Memorandum whereof has been endorsed on the recited Assent [*or* the recited Conveyance]) and made between the Vendor of the one part and the Trustees of the other part (supplemental to the said Assent [*or* Conveyance]) pursuant to section thirty-five of the Settled Land Act, 1925, it was declared that the Trustees were the trustees of the Settlement for the purposes of the said Act:

[*Recite the Agreement for Sale and continue the operative parts as in Precedent No.* 1, *supra, of this Group.*]

IN WITNESS, &c.(*j*)

Recitals in Conveyances under S. L. Act.

(*j*) From the foregoing precedents it will be seen that in conveyances under the S. L. Act, 1925, there will be no recitals of the will, settlement, disentailing assurance, re-settlement or other instrument creating the trust, nor of any appointments of S. L. Act trustees, whether by deed or by order of court. The recitals will be confined, first, to the vesting instruments whether

" principal " for giving effect either to a settlement subsisting on 1st January, 1926, or for creating a settlement *inter vivos* after 1925 in the authorised way, or for carrying on a settlement already created (before or after 1926) after a change in ownership by reason of a death or a cesser or shifting clause; and to " subsidiary " vesting instruments which are made when land is acquired with capital money or otherwise, and made subject to a subsisting settlement (s. 10) this applies to an exchange, and to the acquisition of a rent charge reserved as the consideration on a conveyance of settled land: *ib.* Where a lease is granted to a tenant for life or statutory owners, it becomes a subsidiary vesting deed and the particulars required by s. 10 may be either inserted therein or endorsed thereon: s. 53.

Principal or subsidiary vesting instruments.

Secondly, certificates of counsel, given as to the correctness of a vesting instrument in accordance with the General Conditions of 1925, to meet the cases where a purchaser would, under s. 110 (2) proviso, otherwise investigate the equitable title (to check the legal title) should also be recited.

Certificates of Counsel to be recited.

And thirdly, deeds, declaring who are the S. L. Act trustees, made pursuant to s. 35, should also be recited, for these are conclusive in favour of a purchaser: s. 110 (2) (*e*).

Declarations as to appointment of S. L. Act trustees.

The precedents relating to freehold land are applicable to enfranchised land with the following variations. The parcels will except any minerals, sporting rights, &c., which may have been reserved to the lord, either under the Copyhold Act, or by L. P. Act, 1922, 12th Sch., unless they have been acquired by the tenant. If the manorial incidents have not been extinguished the habendum should be altered to show that the land is conveyed subject thereto. The conveyance must be produced to the steward for endorsement within six months pursuant to L. P. Act, 1922, s. 129, and the customary payments must be made.

Enfranchised land, variations for.

Manorial incidents.

If the land is subject to a compensation rentcharge this must be mentioned in the habendum. Compare generally as to enfranchised land the precedents of conveyances by absolute owners given in the preceding groups.

Compensation rentcharge.

The persons to make title under the S. L. Act, 1925, whether on a sale, exchange, lease, mortgage, or other disposition authorised by that Act, will be the estate owners entitled to the legal estate in possession (subject or not to a lease or to legal mortgages affecting the settled land) with the following exceptions:—

Persons to make title under the S. L. Act, 1925.

(i) The court may under s. 24 deprive a tenant for life of his powers and confer them on the trustees of the settlement, but even so the conveyance will be made in his name, he will remain the " estate owner," *i.e.*, the owner of the fee simple or term of years absolute.

(ii) During a minority, after administration is completed, and pending the execution of a vesting instrument, the personal representatives in whom the settled land is vested as estate owners can allow the S. L. Act trustees to act, give effect to their directions and allow them to receive the capital money, but a purchaser is not concerned with those directions: *ib.*, s. 26 (2). The object of this is to save the costs of a vesting instrument if the infant has nearly attained full age.

On the 1st January, 1926, all settled land within S. L. Act, 1925, will (subject to the mortgage terms of legal mortgagees) vest in the tenant for life (of full age: s. 117 (1) (xxviii)), including persons of full age having the powers of a tenant for life (s. 20) or " statutory owners," see ss. 23, 26, 117 (1) (xxvi), by virtue of L. P. Act, 1925, 1st Sch., Pts. II to VIII, and S. L. Act, 1925, 2nd Sch. But, though the legal estate is so vested, title cannot be made till a vesting instrument has been executed: *ib.*, s. 13.

Vesting of settled land on 1st January, 1926.

In the case of a minority if there are no S. L. Act trustees in whom the land can vest, it will pass to the Public Trustee till trustees are appointed in his place: *ib.*, 2nd Sch., para. 3. But if the infant was beneficially entitled in

Infant attaining full age before S. L. Act trustees are constituted.

possession to a legal estate and the Public Trustee does not become the S. L. Act trustee and no trustees are appointed in his place before the infant attains full age, the legal estate will revest in him: *ib.*, para. 3 (1) (v).

Inalienable rights of tenant for life and statutory owners.

Tenants for life and statutory owners have inalienable rights, not only to exercise the statutory powers, but to have the settled land vested in them: *ib.*, s. 106 (1) (*a*); though the rule is that a purchaser can (subject to S. L. Act 1925, s. 110 as modified by the Genl. Con. of 1925) rely on the vesting instrument as showing who is the tenant for life or statutory owner: s. 110.

When title can be made under S. L. Act, 1925, it must be so made.

But though purchasers can thus deal with certified tenants for life, it is essential that purchasers or their advisers should know whether or not there are tenants for life (including persons having the powers of tenants for life) and statutory owners, for when the abstract discloses the fact that there is a tenant for life or statutory owner, they can (L. P. Act, 1925, s. 42) and must insist on title being made under the S. L. Act, 1925, for otherwise the legal estate will not pass by the conveyance (*ib.*, ss. 13 and 18); this means that the purchaser will not get a title even, which with the aid of special conditions, he can force on another purchaser: L. P. Act, 1925, s. 42.

No notice of a settlement.

Only where a purchaser has not notice of a settlement can he obtain a title to settled land otherwise than under the S. L. Act, 1925: see s. 13.

What constitutes a settlement.

Thus it is essential also that purchasers should know what constitutes a settlement in case one is disclosed by the abstract.

Section 1 describes what a settlement is, while s. 9 deals with freak cases. The points to note on s. 1 are that—

(i) Trusts (not being trusts of the proceeds of land held on trust for sale) for persons in succession create a settlement, whether or not constituted by more than one document.

(ii) Trusts creating an entailed interest in possession in land, an executory gift over of an estate in fee simple or term of years absolute in possession, a base or determinable fee or a corresponding interest in leaseholds, all create settlements.

(iii) A trust of a legal estate in possession for an infant creates a settlement.

(iv) A trust of a legal estate for any person on a contingency creates a settlement.

(v) A trust of land for a married woman with a restraint on anticipation creates a settlement.

(vi) A family charge (*e.g.*, jointure or portions) on land creates a settlement; thus a purchaser who, before 1926, acquired land subject to family charges, may either have to obtain a release or an appointment of S. L. Act trustees before he can make a title. It is possible however that the courts may hold, in this case, that the instrument creating the charge or power of charging and the conveyance to the purchaser do not together create a settlement.

Compound Settlement.

If there is a compound settlement, the trustees of that settlement will be the S. L. Act trustees: and see ss. 31 and 32.

Infant entitled under an intestacy before 1926.

If an infant becomes entitled under an intestacy or there is no instrument to create the settlement, a settlement will be deemed to have been made by the intestate or by the person whose interest the infant has acquired; this is one of the freak settlements: see also s. 9.

Dower.

Notwithstanding dower, an infant will be deemed in possession, unless the dower has been assigned, in the latter case the dowress will be the tenant for life of the land assigned. These are also freak cases. In the latter case the letters of administration or probate in respect of the husband's estate will be the settlement.

Section 9 includes the case of a settlement which does not comply with the requirements of the Act. That section is confined to instruments coming into operation after 1926.

Duration of Settlements.

A settlement remains so long as any limitation charge or power subsists, or the person who if of full age would be entitled to have the legal estate conveyed to him is an infant: s. 3. The settlement, as respects purchasers, is treated as subsisting till a deed of discharge is executed: s. 17.

"Settled land."

Land remains "settled land" so long as it is subject to a settlement: s. 2.

Who are tenants for life.

Under s. 19 the persons of full age who are tenants for life (if there are more than one they will hold as joint tenants, the trust estate cannot be severed) are—

(i) The person entitled for life.

(ii) Two or more if so entitled as joint tenants.

If the land is held in undivided shares the entirety becomes subject to a trust for sale, and is not within the Act: L. P. Act, 1925, ss. 34-38, 1st Sch., Pt. IV; S. L. Act, 1925, s. 36. The test is not how the income is payable, but whether the settled land itself is held in undivided shares. Arrangements for the mere division of the income are immaterial.

(iii) If there are two or more of them so entitled and they are not all of full age, those who are of full age will be the tenants or tenant for life. It makes no difference if their equitable interests are incumbered, charged or assigned unless their interests are extinguished, see s. 105 (surrender to next remainderman).

Persons having the powers of a tenant for life.

Section 20 sets out the persons of full age entitled in possession who have the powers of a tenant for life and are now included in the definition of "tenant for life." This reproduces S. L. Act, 1882, s. 58, with amendments consequential on the definition in s. 1 of "settlement." Only persons entitled in possession are within the section, which, however, includes a person beneficially entitled to a fee simple or term of years absolute subject to family charges and a married woman subject to a restraint on anticipation.

Absolute owner subject to equitable interests.

An absolute owner (not a person entitled subject to family charges within s. 20 (1) (ix) where he is already a tenant for life under a subsisting settlement) entitled subject to equitable interests (*e.g.*, equitable charges created for money's worth) can under s. 21, create a settlement for the purpose of overreaching such interests, but until the requirements of the section are complied with he does not acquire the powers of a tenant for life. See also L. P. Act, 1925, ss. 2 (2) and 42.

"Statutory owners" act when there is no tenant for life.

If there is a "settlement" but there is no tenant for life (*e.g.*, where there is a discretionary trust of the income) then the person on whom the powers are expressly conferred by the settlement will have them, in default the S. L. Act trustees will have the powers: s. 23. These persons (whether or not being the S. L. Act trustees) are called "statutory owners." That expression also includes the trustees of the settlement when they act during a minority under s. 26. It follows that (unless the tenant for life goes abroad and cannot be found) there will always be a person to make title to land however it is settled.

Personal representatives.

Personal representatives can also make title to settled land when it is vested in them: ss. 26, 110 (3); Ad. of E. Act, 1925, s. 39.

Married woman.

A married woman of full age being a tenant for life, becomes a trustee of the settled land and can, whenever she married, exercise the statutory powers without her husband: S. L. Act, 1925, s. 25.

Infants.

During a minority the settled land will be vested either in personal representatives or S. L. Act trustees (*ib.*, s. 26), and they will make title, save in cases within s. 19, when the co-tenant for life of full age will have the land vested in him. See also s. 27 (conveyance to infant after 1925); 2nd Sch., para. 3 (vesting of infant's land on 1st January, 1926); L. P. Act, 1925, s. 19 (2) (conveyance to an infant and a person of full age after 1925 of a legal estate creates a trust for sale) 1st Sch., Pt. III (vesting of infant's legal estates on 1st January, 1926).

Lunatics and defectives.

Lunatics and defectives will act by their committee or receiver: S. L. Act, 1925, s. 28; L. P. Act, 1925, s. 22.

No. IV.

ASSIGNMENT *of* LEASEHOLDS *by a* TENANT *for* LIFE under *the* SETTLED LAND ACT, *where the* LEASEHOLDS *were acquired before* 1926. VARIATIONS *where the* LEASEHOLDS *were acquired after* 1925. (*Legal Estate.*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c (*tenant for life*) (hereinafter called the Vendor), of the 1st part, M. of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Recital of Lease.

(1) (*Form No.* 28 (1), *Sec. I, p.* 468):

Assignment to trustees on the trusts of a Settlement [or Will].

(2) [After divers mesne assignments and acts in the law ultimately] under an Assignment, dated, &c., and made, &c., the property comprised in the recited Lease became vested in the Trustees for the residue of the term thereby granted upon the trusts which having regard to section twenty-four of the Settled Land Act, 1882, the same ought to be held by reason of the purchase-money having been paid out of capital money arising under a settlement, dated, &c. [*or* a Will, dated, &c., and proved on, &c., of —— who died on, &c.:]

Vesting Deed made in 1926.

(3) *Deed vesting the term and other property in the Vendor on the trusts of the said Settlement* [*or Will*] *and stating that the Trustees are the trustees of the Settlement.* [*Adapt Form No.* 30, *Sec. I, p.* 469, *supra.*]

Counsel's Certificate.

(4) By Counsel's Certificate, dated, &c., it was certified that at the date of the said Vesting Deed the Vendor was the person in whom the said Lease and other property ought to be vested as tenant for life under the said Settlement [*or* Will] and that the Trustees at that date were the trustees of the Settlement:

Variations of recitals where the Settlement was made and the Lease was acquired after 1925.

[(1) By a Deed (hereinafter called the Principal Vesting Deed), dated, &c., and made, &c., it was declared that certain freehold land at ——, was vested in the Vendor in fee simple Upon the trusts of a Trust Instrument of even date therewith; that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925, and that the Vendor had power to appoint new trustees:

(2) *Recite the Lease Form No.* 28 (1), *Sec. I, p,* 468, *supra. Or if the Lease was granted direct to the Vendor recite that the Lease*

Charitable and public trusts.

Under S. L. Act, 1925, s. 29, the statutory powers are subject to certain safeguards given to trustees of charities; this section will be construed by itself. See also Universities and College Estates Act, 1925.

took effect as a subsidiary Vesting Deed by virtue of the endorsements thereon which contained a statement that the said term was vested in the Vendor on the trusts of the Trust Instrument referred to in the Principal Vesting Deed, that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925, and that the Vendor had power to appoint new trustees of the Settlement. If this was the case the next recital will not be required.

(3) By an Assignment, dated, &c., made, &c. (supplemental to the Principal Vesting Deed), the property comprised in the recited Lease was assigned to the Vendor for the residue of the said term and it was declared that the said Lease was vested in the Vendor on the trusts of the Trust Instrument mentioned in the Principal Vesting Deed that the Trustees were the Trustees of the Settlement for the purposes of the Settled Land Act, 1925, and that the Vendor had power to appoint new trustees :] Assignment.

(4) *or* (5) The Vendor, as such estate owner and trustee as aforesaid, has agreed to sell to the Purchaser free from incumbrances the property demised by the recited Lease for the residue of the term thereby granted at the price of £——: Agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— by the direction of the Vendor now paid by the Purchaser to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Act, 1925, and of all other powers, and As Trustee, hereby assigns unto the Purchaser Conveyance by tenant for life.

All the premises comprised in and demised by the recited Lease, Parcels.

To hold unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed But discharged as provided by section seventy-two of the Settled Land Act, 1925. Habendum.

2. Covenant (C) referred to in section seventy-seven of the Law of Property Act, 1925, shall be herein implied. Implied covenant to pay rent, &c.

3. The Vendor hereby acknowledges the right of the Purchaser to production of the recited Vesting Deed and Counsel's Certificate [*or* the Principal Vesting Deed] and to delivery of copies thereof. Acknowledgment as to documents relating to the legal term.

[4. *Add Form No.* 8, *Sec. III, p.* 483, *supra, if required.*]

In witness, &c. Certificate.

No. V.

CONVEYANCE *of* FREEHOLDS, ENFRANCHISED LAND *(subject to manorial incidents)*, *and* LEASEHOLDS *under the Settled Land Act*, 1925, *where all the property was acquired before* 1926. *(Legal Estate.)*

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. *(tenant for life)* (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Recital of Lease.

(1) *Recite Lease to Vendor as in Form No.* 28 (1), *Sec. I, p.* 368):(*l*)

Operation of L. P. Act, 1925.

(2) Immediately before the commencement of the Law of Property Act, 1925, the freehold property hereinafter described was subject to the limitations of the Settlement referred to in the Vesting Deed hereinafter recited, the enfranchised land hereinafter described was vested in the Trustees for a customary estate in fee simple (being then copyhold of the Manor of ——) on the trusts of the said Settlement and the property comprised in the recited Lease had also become vested in them for the residue of the said term on the trusts of the said Settlement under which the Vendor was then tenant for life in possession, and the Trustees were the trustees thereof for the purposes of Settled Land Acts, 1882 to 1890; and accordingly by virtue of the Law of Property Acts 1922 and 1925, the said freehold property and enfranchised land became vested in the Vendor in fee simple, subject as respects the said enfranchised land to the manorial incidents and rights of the lord saved or reserved by the said Act of 1922, and the property comprised in the recited Lease became vested in the Vendor for the residue of the term thereby granted:

Vesting Deed.

(3) By a Vesting Deed, dated, &c., and made, &c., the Trustees declared that the freehold and enfranchised properties hereinafter described (with other properties), and also the property comprised in the recited Lease were vested in the Vendor as to the freehold and enfranchised properties in fee simple (but subject as to the said enfranchised property to the manorial incidents and lord's rights aforesaid), and as to the said leasehold property

Covenant to pay rent on assignment under S. L. Act.

(*l*) The settlement would not contain any covenant by the trustees to pay rent, &c.; hence they cease to be liable in regard to future breaches under the lease on the assignment to the purchaser. The tenant for life will, if he acquired and settled the lease, remain liable under the covenants in the lease, and as vendor would then be entitled to a covenant from the purchaser.

for the residue of the term granted by the recited Lease and as to all the properties on the trusts of a Settlement, dated, &c. And also declared that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925, and that the Vendor had power to appoint new trustees :

Counsel's Certificate.

(4) By Counsel's Certificate, dated, &c., it was certified that the properties referred to in the said Vesting Deed were at the date thereof subject to the trusts of the Settlement therein mentioned That the Vendor was the proper person (as tenant for life under the said Settlement) in whom the said properties should be vested That the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 And that the Vendor had power to appoint new trustees of the Settlement :

Agreement for sale.

(5) The Vendor as such estate owner and trustee as aforesaid has agreed to sell to the Purchaser free from incumbrances (save as hereinafter mentioned) the freehold and enfranchised properties hereinafter described and the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £——:(*m*)

NOW in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser by the direction of the Vendor to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge)—

Conveyance of freeholds and enfranchised land.

THIS DEED WITNESSETH as follows :—

1. The Vendor, in exercise of the power conferred on him for this purpose by the Settled Land Act, 1925, and of all other powers, and As Trustee, hereby conveys unto the Purchaser—

First, All and singular the freehold property, &c. (*see Forms in Sec. II, p.* 471 *et seq.*),

Parcels of enfranchised land.

And Secondly All and Singular &c. (*the enfranchised lands*) Except out of this Conveyance all the rights of the lord of the said Manor, whether in respect of minerals sporting rights or otherwise which were reserved to him by the 12th Schedule to the Law of Property Act, 1922,

Habendum.

To Hold unto the Purchaser in fee simple subject as respects the lands secondly hereinbefore described to the manorial incidents saved by Part V of the said Act of 1922 ; but as to all the property discharged as provided by section seventy-two of the Settled Land Act, 1925.

Endorsement by steward.

(*m*) As the precedent assumes that the manorial incidents have not been extinguished, this conveyance must be produced to the steward under L. P. Act, 1922, s. 129, and the customary payments made.

Assignment of leaseholds.

2. THE Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Act, 1925, and of all other powers, and As Trustee, hereby assigns unto the Purchaser

Parcels.

ALL the premises comprised in and demised by the recited Lease,

Habendum.

TO HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained, and henceforth on the part of the lessee to be paid, observed and performed But discharged as provided by section seventy-two of the Settled Land Act, 1925.

Implied covenant to pay rent, &c.

3. COVENANT (C) referred to in section seventy-seven of the Law of Property Act, 1925, shall be herein implied.

Acknowledgment.

4. THE Vendor hereby acknowledges the right of the Purchaser to production of the recited Vesting Deed and Counsel's Certificate and to delivery of copies thereof.

IN WITNESS, &c. [*Add Schedules of freeholds and enfranchised land if required.*](*n*)

No. VI.

CONVEYANCE *of* FREEHOLDS *under the* SETTLED LAND ACT, *where a Legal* MORTGAGEE CONCURS. VARIATIONS *where the* MORTGAGE DEBT *is* CHARGED *on the* PROCEEDS *of Sale.*(*o*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made the —— day of —— BETWEEN G. H., of, &c. (hereinafter called the Mortgagee), of the 1st part, A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of

Covenants for title.

(*n*) The vendor will convey as trustee, unless he is absolutely entitled subject only to equitable interests; in which case he will convey as beneficial owner without qualification, for the purchaser will under L. P. Act, 1925, s. 42, insist on his conveying so as to overreach the equitable interests, and if necessary he must create a settlement under S. L. Act, 1925, s. 21, or a trust for sale under L. P. Act, 1925, s. 2 (2), to enable him to do so.

Equitable interests.

Undertaking for safe custody.

Where he conveys as beneficial owner he should also give an undertaking for safe custody of documents retained as well as the acknowledgment: General Conditions of 1925.

Documents affecting the equitable title.

If the documents affecting the equitable titles before 1926 are investigated an acknowledgment of the right to their production should be taken separately so as to keep references thereto off the title of the legal estate.

Shifting of incumbrances.

(*o*) If a person entitled to a mortgage, which the tenant for life could not overreach, concurs in a sale and releases the land sold, the charge does not attach to the purchase money, but the mortgagee can by agreement acquire a valid lien on the purchase-money and the interim investments thereof under S. L. Act, 1925, s. 69. In such a case it seems that the consent of the mortgagee would be necessary to any investment or other application under s. 75 (2). Compare s. 104, relating to charges affecting the life interest.

It is immaterial whether the mortgagee or the vendor are named first in the parties, both have legal estates.

the 2nd part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 4th part: WHEREAS:—

Recital of Mortgage.

(1) By a Mortgage dated the —— day of ——, 1924, and made between F. B. of the one part and the Mortgagee of the other part, the said F. B., being then seised in fee simple in possession free from incumbrances, conveyed the property hereinafter described to the Mortgagee in fee simple subject to redemption by the said F. B. or the persons deriving title under him on payment to the Mortgagee of the principal sum of £——, with interest thereon as therein mentioned:

Operation of L. P. Act, 1925.

(2) By virtue of the Law of Property Act, 1925, a term of 3,000 years became vested in the Mortgagee subject to cesser on redemption under the recited Mortgage and the fee simple in the property comprised in that Mortgage (with other property) became vested in the Vendor as the person having the statutory powers of a tenant for life under the Will of the said F. B. hereinafter referred to:

Vesting Deed.

(3) By a Vesting Deed, dated, &c., and made, &c., the Trustees declared that the property comprised in the recited Mortgage (subject to the said term of 3,000 years vested in the Mortgagee) with other property was vested in the Vendor in fee simple Upon the trusts of the Will, dated, &c., and proved, &c., of the said F. B., who died on, &c. Also that the Trustees were the trustees of the Settlement created by the said Will for the purposes of the Settled Land Act, 1925 And that the Vendor had power to appoint new trustees:

Counsel's Certificate.

(4) By Counsel's Certificate, dated, &c., it was certified that at the date of the said Vesting Deed the property therein referred to was subject to the trusts of the said Will; that at the date aforesaid the Vendor was the person in whom the said property ought to be vested as the person having the powers of a tenant for life under the Settlement created by the said Will; that the Trustees at the date aforesaid were the trustees of the said Settlement for the purposes of the Settled Land Act, 1925; and that the Vendor had power to appoint new trustees of the said Settlement:

Agreement for sale.

(5) The Vendor,(*p*) as such estate owner and trustee as aforesaid, has agreed to sell to the Purchaser the property

Memorandum converting Mortgage into a legal charge.

(*p*) If the mortgagee converts his mortgage into a charge by way of legal mortgage, the following recital should precede the recital of the agreement

hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Agreement by Mortgagee to concur where he is paid off.

(6) The said sum of £—— is still owing to the Mortgagee upon the security of the recited Mortgage, all interest thereon having been paid as he hereby acknowledges, and he has agreed upon receiving the sum so due to him to join in these presents in manner hereinafter appearing:

[Variation. Agreement by Mortgagee to concur where the mortgage debt is left charged on the proceeds of sale.]

[(6) The said sum of £——, with the current interest thereon, is still owing to the Mortgagee upon the security of the recited Mortgage, and it has been agreed that the Mortgagee shall release the property hereinafter described from his said mortgage debt, and that in consideration thereof the purchase-money and the land to be hereafter purchased therewith and the investments upon which the same shall in the meantime be invested shall be made a substituted security for the said mortgage debt:(*q*)]

NOW THIS DEED WITNESSETH as follows:—

Conveyance by Mortgagee and tenant for life.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser by the direction of the Vendor to the Mortgagee (*r*) (the receipt of which sum the Mortgagee hereby acknowledges), and of the sum of £—— now paid by the Purchaser by the direction of the Vendor to the Trustees as such trustees as aforesaid (the receipt of which sum of £—— and the payment of which sum of £——, making together the said purchase-money of £——, the Trustees hereby acknowledge), the Mortgagee, As Mortgagee, and according to his term, hereby surrenders and releases, and the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Act, 1925, and of all other powers and As Trustee, hereby conveys unto the Purchaser

Parcels.

All those, &c. (*see Forms, Sec. II, p. 471, et seq.*),

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to sell, and in the operative part the mortgagee will only release instead of surrendering.

By a memorandum dated, &c. (endorsed on the recited Mortgage) the Mortgagee in exercise of the power conferred on him by section eighty-seven of the Law of Property Act, 1925, declared that the recited mortgage should by that memorandum (signed by him) be converted into a charge by way of legal mortgage.

(*q*) The mortgagee should take a separate agreement from the tenant for life for evidencing this arrangement.

(*r*) If the mortgagee is simply surrendering without taking any part of the purchase-money, all reference to payment to him will be omitted.

TO HOLD unto the Purchaser in fee simple discharged from all principal money and interest secured by and from all claims under the recited Mortgage, and discharged as provided by section seventy-two of the Settled Land Act, 1925. Habendum.

2. THE Vendor hereby acknowledges the right of the Purchaser to production of the recited Vesting Deed and Counsel's Certificate and to delivery of copies thereof. Acknowledgment as to documents.

[3. *Add, if required, Form No.* 8, *Sec. III, p.* 483, *supra.*] Certificate.

IN WITNESS, &c. [*Add Schedules of freeholds, if required.*]

No. VII.

MEMORANDUM *of* CONSENT *by* MORTGAGEES *of a* LIFE INTEREST *in settled land to a* SALE *by the* TENANT *for* LIFE *under the* SETTLED LAND ACT *where the* MORTGAGES *were made before* 1926. (*Equitable Interest.*)

THIS MEMORANDUM OF CONSENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the First Mortgagee), of the 1st part, C. D., of, &c. (hereinafter called the Second Mortgagee), of the 2nd part, E. F., of, &c. (hereinafter called the Third Mortgagee), of the 3rd part, and G. H., of, &c. (hereinafter called the Tenant for Life), of the 4th part: WHEREAS:— Parties.

(1) Under a Settlement, dated, &c., the Tenant for Life is beneficially entitled to certain property in the County of —— for his life in possession: Settlement.

(2) The Tenant for Life has executed mortgages of his life interest (*s*) in the settled land in favour of the First, Second and Mortgages by tenant for life.

(*s*) Under S. L. Act, 1925, s. 104, a purchaser is no longer concerned to see that the consent of an assignee or mortgagee (not being the next remainderman to whom the life interest has been surrendered: s. 105) of a life interest, where the transaction was carried out before 1926, has been given: sub-s. 5 (*a*). If the transaction is carried out after 1925, no consent to the exercise of the statutory powers is required (sub-s. (4)), but the assignee or chargee gets a corresponding interest in or charge on the capital money arising; if the assignment so provides or it takes effect by the bankruptcy law then, after notice to the trustees, no investment, save in trustee securities, or application of the money is to be made without consent; notice of the intended exercise of the power is to be given to the assignee, but a purchaser of the settled land is not concerned with this: *ib.* Position of Mortgagees and Assignees of life interests, in regard to the exercise of S. L. Act powers.

Though a purchaser of the settled land is not concerned, still consents are required where the title was acquired before 1926, save in the case of leases within sub-s. 3 (*a*) unless the assignee is in possession. The assignee will get a corresponding interest or charge on the capital money: sub-s. 5 (*b*).

Where the life interest is extinguished by a surrender to the next remainderman within s. 105, the statutory powers are thenceforth exercisable as if the surrenderor were dead; but until a vesting deed is made under s. 7 as evidence Surrender to next remainderman.

Third Mortgagees respectively, the short particulars of which mortgages are contained in the First Schedule hereto:

That tenant for life wishes to sell under S. L. Act.

(3) The Tenant for Life is desirous of selling the land mentioned in the Second Schedule hereto (being part of the settled property) under the powers conferred by the Settled Land Act, 1925, and he has requested the First, Second and Third Mortgagees respectively to give their consent to such sale, which they have agreed to do in manner hereinafter appearing:

NOW THIS MEMORANDUM WITNESSETH and it is hereby agreed as follows:—

Mortgagees' consent to tenant for life selling.

1. In consideration of the premises, the First, Second and Third Mortgagees hereby respectively consent to the Tenant for Life selling the settled land mentioned in the Second Schedule hereto, or any part thereof, under the powers conferred by the Settled Land Act, 1925.

Mortgages transferred to life interest in sale money.

2. The life interest of the Tenant for Life in the money to arise from the sale of the said land, and in the land to be purchased with such money, and in the investments upon which such money shall in the meantime be invested, shall remain charged with the payment of all principal money and interest secured or intended to be secured by the several Mortgages mentioned in the First Schedule hereto in accordance with section one hundred and four of the said Act, and notice of any intended transaction affecting the said proceeds of sale or the property representing the same shall be given under the said section in like manner as if the said mortgages had been made after the commencement of the said Act.

As witness, &c.(*t*)

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of the change of ownership, a purchaser of the settled land can still deal safely with the surrenderor: s. 110. Where the surrender was made before 1926, the vesting deed under 2nd Sch., para. 1, will be made in favour of the person entitled to exercise the powers, not in favour of the original tenant for life.

Execution by attorney.

(*t*) The mortgagees, though corporations aggregate, can execute the agreement by an agent or attorney: L. P. Act, 1925, s. 74 (2).

Notice to S. L. Act trustees.

Notice of the mortgages and of the memorandum of consent should for safety be given to the S. L. Act trustees: *ib.*, s. 137; for the memorandum might constitute a dealing after 1925.

Acknowledgment of right to production from mortgagees of life interests not required.

An acknowledgment of the right to production of the mortgages will no longer be required to enable the tenant for life to give to purchasers of the settled land (by acknowledging their right to production of the memorandum) a right to production of the documents retained by the mortgagees of the life interest, for the purchasers will not be concerned with the mortgages or the memorandum.

THE FIRST SCHEDULE.

First Part.

Short particulars of a mortgage effected in favour of the First Mortgagee.

Second Part.

Short particulars of a mortgage effected in favour of the Second Mortgagee.

Third Part.

Short particulars of a mortgage effected in favour of the Third Mortgagee.

THE SECOND SCHEDULE.

Short particulars of the land intended to be sold.

No. VIII.

RELEASE *of* FREEHOLDS *by* S. L. ACT TRUSTEES *to the* TENANT *for* LIFE *as* PURCHASER. (*Legal Estate.*) (*u*)

THIS RELEASE is made, &c., BETWEEN M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the one part, and A. B., of, &c., (*tenant for life*) (hereinafter called the Purchaser), of the other part: WHEREAS :— Parties.

(1) *or* (2) [*Recite Vesting Deed for giving effect to Will of testator who died before* 1926 *and Counsel's Certificate or a Vesting Assent by the Trustees as executors where the testator died after* 1925 *as in Precedent No. I of this Group; or the Vesting Deed for making a Settlement after* 1925 *between the Purchaser and the Trustees, or a Vesting Deed for giving effect to a Compound Settlement made before* 1926 *andCounsel's Certificate as in Precedent No. II of this Group; or a Vesting Deed for giving effect to a settlement made before* 1926 *and Counsel's Certificate as in Precedent No. III of this Group; or otherwise as the facts relating to the legal estate require.*] Recitals.

A mortgagee of a life interest merely is not entitled to the documents relating to the settled land, the tenant for life is prohibited from delivering them to such a mortgagee: S. L. Act, 1925, s. 111. Documents held by tenant for life.

Under that section the mortgagee or assignee who, independently of the restriction on the subsistence of legal life estates, would have had a legal estate, still retains his legal remedies, *e.g.*, he can maintain an action for ejectment, but without prejudice to the statutory powers of the tenant for life. Powers of mortgagees and assignees of life interests.

(*u*) This transaction is carried out under S. L. Act, 1925, s. 68 (under which the trustees can act in the name and on behalf of the tenant for life) and s.17 (deed of discharge on termination of settlement); see also L. P. Act, 1925, s. 72 (conveyance to self).

That the Purchaser is tenant for life in equity.

(2) *or* (3) Under the Will [Settlement] referred to in the recited Vesting Instrument the Purchaser is now the tenant for life [person having the powers of a tenant for life] for the purposes of the Settled Land Act, 1925.

Agreement for sale.

(3) *or* (4) The Trustees have, in exercise of the powers conferred by section sixty-eight of the said Act, agreed to sell to the Purchaser the property hereinafter described, of which the Purchaser is now tenant for life in possession as hereinbefore mentioned and the fee simple thereof in possession free from incumbrances at the price of £—— :

NOW in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge) THIS DEED WITNESSETH as follows:—

Conveyance to tenant for life.

1. (1) The Purchaser (acting by the Trustees) in exercise of the powers conferred by section sixty-eight of the Settled Land Act, 1925, hereby conveys and the Trustees, as Trustees, hereby confirm unto the Purchaser,(*v*)

ALL, &c. (*see Forms in Sec. II, p. 471, et seq.*),

TO HOLD unto the Purchaser in fee simple, discharged as provided by section seventy-two of the said Act.

Discharge under s. 17.

(2) The Trustees in exercise of the powers conferred on them by section seventeen of the said Act hereby declare that, so far as regards the property hereinbefore expressed to be conveyed, they are discharged from the trust so created by the Will [Settlement] hereinbefore referred to.

Acknowledgment for production.

2. THE Trustees acting for the Purchaser as well as for themselves hereby acknowledge (*w*) the right of the Purchaser

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Dealings with a tenant for life.

(*v*) Before S. L. Act, 1890, s. 12, was passed, trustees with a power of sale exercisable with the consent of a tenant for life, could sell to him : *Dicconson* v. *Talbot* [1870], L. R. 6 Ch. 32. S. 12 of the S. L. Act, 1890, only applied to sales, exchanges and partitions ; but S. L. Act, 1925, s. 68, extends as well to grants (*e.g.*, at fee farm rent), mortgages, leases and other authorised dispositions of the settled land or any right thereover, also capital money may be advanced on mortgage to him and land may be purchased from him ; but the section does not apply to dealings with a body of persons which includes a trustee of the settlement (*e.g.*, where the tenant for life and one of the trustees are acting as executors of another estate) unless the transaction is previously or subsequently approved by the court. A person may convey to himself : L. P. Act, 1925, s. 72.

Custody of documents relating to settled land.

(*w*) Though the tenant for life would in the above case be entitled to the custody of the deeds relating to the legal estate (S. L. Act, 1925 s. 98 (3)), the undertaking referred to in *Re Burnaby's S. E.* (1889), 42 Ch. D. 621 ; 58 L. J. Ch. 664 ; *Re Wythes* [1893], 2 Ch. 369 ; 62 L. J. Ch. 663 ; *Re Beddoe* [1893], 1 Ch. 547 ; 62 L. J. Ch. 233 ; *Re Newen* [1894], 2 Ch. 297 ; 63 L. J.

to production of the documents mentioned in the Schedule hereto and to delivery of copies thereof.

[3. *Add Form No.* 8, *Sec. III*, *p.* 483, *if required.*]

IN WITNESS, &c.

THE SCHEDULE.

Particulars of documents relating to the legal estate and to the creation of the life interest.

No. IX.

CONVEYANCE *of* FREEHOLDS *by a* MARRIED WOMAN TENANT *for* LIFE, *entitled with or without power of anticipation or absolutely entitled subject to a restraint.*(*x*) (*Legal Estate.*)

Parties

THIS CONVEYANCE is made, &c., BETWEEN Jane B. (*tenant for life*) (hereinafter called the Vendor), the wife of W. B., of, &c., of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Ch. 763, is no longer required: *ib.*; nevertheless this acknowledgment should be given here, as it will enure for the benefit of the persons deriving title under the tenant for life. Trustees who had a lien were formerly entitled to the custody of the deeds (*Wheeler* v. *Tootell* [1903], 51 W. R. 693), but this is not so if the lien arising after 1925 only affects the equitable interest of the tenant for life (*ib.*, s. 111); equitable charges can be effected by a tenant for life (*ib.*, ss. 69-70); but generally when raising money the charge will be created by legal mortgage: s. 71. As the trustees under s. 68 have, in addition to their own powers, the powers of a tenant for life in reference to completing the transaction, it must be assumed that the documents would be deemed to be in their custody for the purposes of the transaction.

Position of married women under S. L. Act.

(*x*) A married woman can, whether or not the property is her "separate property," exercise her powers under the S. L. Act, 1925, without joining her husband and notwithstanding any restraint on anticipation (s. 25); but she must be of age: *ib.* If she is an infant then s. 26 applies. A settlement arises if land is limited to or in trust for a married woman with a restraint on anticipation (s. 1 (1) (iv)); if she is entitled to land for an estate in fee simple or for a term of years absolute, subject to a restraint on anticipation, she has the powers of a tenant for life (s. 21 (1) (x)), thus removing the difficulty disclosed in *Bates* v. *Kesterton* [1896], 1 Ch. 159; 65 L. J. Ch. 108. If before 1925, as in *Re Pocock and Pankerd*, [1896], 1 Ch. 302, land is limited in trust for a married woman for life without power of anticipation, with remainder to such uses as she should appoint by will, and in default to her in fee simple; this creates a settlement (s. 1 (1) (iv)), and she has the powers of a tenant for life under s. 21 (1) (viii); a vesting deed for giving effect to such a settlement must be executed. A married woman who is or has the powers of a tenant for life on 1st January, 1926, will under L. P. Act, 1925, 1st Sch., Pt. II, para. 5, acquire the legal estate which she is given power to convey, but before she can make title a vesting instrument must be executed: S. L. Act, 1925, s. 13.

Vesting.

Recitals.

(1) and (2) [*Recite the Vesting Deed or Assent and other instruments affecting the legal estate, including Counsel's Certificate if the Settlement or Will came into force before* 1926, *as in Precedent I, II, or III of this Group, as the case may require, showing that the fee simple has become vested in the Vendor and that the Trustees are the trustees of the Settlement. If the legal estate was conveyed to the Vendor in fee simple with a restraint on anticipation before* 1926, *as in* Bates *v.* Kesterton [1896], 1 *Ch.*159, *a Counsel's Certificate should be obtained when the Vesting Deed is executed* (*S. L. Act*, 1925, *s.* 110 (2), *proviso* (a)), *and it will be necessary to apply to the court under s.* 35 *for the appointment of S. L. Act trustees; if the Conveyance is made after* 1925, *then, unless the transaction is carried out by a Vesting Deed and Trust Instrument* (*ss.* 4-5), *the legal estate will be left outstanding* (*s.* 4 (1)), *till a vesting instrument is executed under s.* 9 (1) (*iii*), (2), *by the S. L. Act trustees; here, again, a Counsel's Certificate should be obtained when the Vesting Deed is executed to avoid an investigation into the equitable interests under s.* 110 (2), *proviso* (d)].

Agreement for sale.

(3) The Vendor, as such estate owner and trustee as aforesaid, has agreed to sell the property hereinafter described to the Purchaser and the fee simple thereof in possession free from incumbrances at the price of £—— :

NOW THIS DEED WITNESSETH as follows :—

(*The operative parts will be the same as in Precedent I of this Group, p.* 570, *supra.*(*y*))

IN WITNESS, &c.

No. X.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *for the purposes of the* SETTLED LAND ACT *where an* INFANT *is beneficially entitled for* LIFE *or two or more* INFANTS *are beneficially entitled for* LIFE (*there being no* TENANT *for* LIFE *of full age*) *or where there are* ONE *or* MORE INFANTS *beneficially entitled to an* ESTATE *in* FEE SIMPLE *or* TERM *of* YEARS *absolute* (*there being no* CO-OWNER *of* FULL AGE).(*z*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN M., of, &c., and N.,

(*y*) Under the M. W. P. Act, 1893, s. 1, any covenant implied by the conveyance of the vendor binds her present and future separate estate which she is not restrained from anticipating. She will not convey "as beneficial owner" unless she is absolutely entitled subject to equitable interests.

Position of infants under the new law.

(*z*) An infant cannot have a legal estate (L. P. Act, 1925, s. 1); any legal estate beneficially vested in an infant solely or in two or more infants

of, &c. (*the trustees*) (hereinafter called the Vendors), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

(1) By a Vesting [Deed] (*a*) Assent, dated, &c., the Vendors declared that the property hereinafter described (with other

Vesting assent to give effect to a Will in favour of an infant either for life or for a beneficial interest in fee simple [or for a term of years absolute](*b*)

on 1st January, 1926, will under S. L. Act, 1925, 2nd Sch., para. 3, vest in the S. L. Act trustees, if any; if there are none it will vest in the Public Trustee till S. L. Act trustees are appointed (see that para. for additional powers to appoint S. L. Act trustees in this case). An infant cannot be a tenant for life within the meaning of that Act (s. 19), though he can have a beneficial interest in land for his life or for any other equitable interest recognised by the general law. If the infant would, if of full age, have been a tenant for life within the Act, or have had the powers of a tenant for life, then the legal estate will similarly vest in the S. L. Act trustees or the Public Trustee: *ib.* In addition to the persons who become S. L. Act trustees under ss. 30-33, the persons who, before 1926, have been appointed by the court under S. L. Act, 1882, s. 60, to act, either generally or for a specific purpose, on behalf of an infant, become S. L. Act trustees: 2nd Sch., para. 3 (3).

These vesting provisions apply where infants are jointly and beneficially interested (para. 3 (5)), but not where the infant is entitled to a legal estate jointly with a person of full age; here the legal estate to which they were jointly entitled vests in the person of full age on trust for sale: L. P. Act, 1925, 1st Sch., Pt. III, para. 2. But if the person of full age and the infant were tenants for life, the person of full age becomes the tenant for life (S. L. Act, 1925, s. 19 (3)), and the legal estate vests in him as settled land (not on trust for sale) under L. P. Act, 1925, 1st Sch., Pt. II, para. 5. If the fee simple or term of years absolute to which an infant was entitled vests in the Public Trustee but he does not become the S. L. Act trustee, and no such trustees are appointed, the legal estate will re-vest in the infant when he attains full age: S. L. Act, 1925, 2nd Sch., para. 5 (1) (v).

Persons to act for infants.

Unless the land vests in a co-tenant for life of full age (s. 19 (3)), or the land becomes subject to a trust for sale under L. P. Act, 1925, 1st Sch., Pt. III, see also s. 19 (2); the persons to act on behalf of the infant whether entitled beneficially to the fee simple or term of years absolute, or as tenant for life will, under S. L. Act, 1925, s. 26, be the personal representatives in whom the legal estate is vested and in other cases the S. L. Act trustees. An intermediate case is where administration is really completed, but it is not worth while for the S. L. Act trustees to call for the legal estate to be vested in them, *e.g.*, where the infant has nearly attained full age. Here the personal representatives will act under the instructions of the S. L. Act trustees, but the purchaser will not be concerned to see that the instructions have been complied with and can pay the capital money to or in accordance with the directions of the personal representatives: s. 26 (2). Further protection is given by s. 110 (3) to purchasers of settled land dealing with personal representatives.

Personal representatives.

When a Vesting Assent or a Vesting Deed should be used.

(*a*) If by virtue of S. L. Act, 1925, 2nd Sch., para. 3, the settled land becomes vested in the S. L. Act trustees of a will in force on 1st January, 1926, then a principal vesting deed is required: *ib.* para. 3 (4). But if, after 1925, the land on the death of a tenant for life becomes vested in the S. L. Act trustees of a subsisting settlement as his special personal representatives; or if a settlement is made by the will of a testator who dies after 1925, then the proper instrument to be used will be a vesting assent.

Leaseholds.

(*b*) When this precedent is made applicable to an assignment of a term of years absolute, the lease creating the term must be recited.

property) [was vested] should vest in themselves in fee simple Upon the trusts declared concerning the same by the Will, dated, &c., and proved by the Vendors on, &c., of X. Y., who died, &c. : Also that the Vendors were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 : And that the statutory power to appoint new trustees was applicable no person of full age having been nominated to appoint new trustees :

Counsel's Certificate.

[*Where the testator died before* 1926 *or in any other case where the proviso to S. L. Act*, 1925, *s.* 110 (2), *applies, add the following recital*:

(2) By Counsel's Certificate, dated, &c., it was certified that the property referred to in the recited Vesting Instrument was at the date thereof subject to the trusts of the Will therein referred to : Also that at the date aforesaid the Vendors were the persons having the statutory powers of a tenant for life by virtue of section twenty-six of the Settled Land Act, 1925 : Also that at the said date the Vendors were the trustees of the Settlement for the purposes of the said Act : and that at the said date there was no person of full age nominated to appoint new trustees of the said settlement :]

[Variation where the settlement is made by deed after 1925 for the benefit of an infant.]

[(1) By a Vesting Deed, dated, &c., and made between, &c., the property hereinafter described (with other property) was conveyed to the Vendors in fee simple Upon the trusts declared concerning the same by a Trust Instrument of even date therewith and made between the same parties and in the same order or upon such other trusts as the same ought to be held from time to time : And it was thereby declared that the Vendors were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 : Also that there was then no person of full age nominated to appoint new trustees of the Settlement :]

Agreement for sale.

(3) The Vendors as such estate owners and trustees as aforesaid have agreed to sell the property hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—— :

Conveyance.

NOW THIS DEED WITNESSETH as follows—

1. In pursuance of the said agreement, and in consideration of the sum of £—— paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the powers for this purpose conferred on them by section twenty-six of the Settled Land Act, 1925, and of all other powers, and As Trustees, hereby convey unto the Purchaser

ALL THOSE, &c. (*see Forms in Sec. II, p.* 471, *et seq.*) Parcels.

TO HOLD unto the Purchaser in fee simple, discharged as provided by section seventy-two of the Settled Land Act, 1925. Habendum.

[2. *Add acknowledgment for production of documents, Form No.* 4, *Sec. III, p.* 480, *if required.*]

[3. *Add if required Certificate Form No.* 8, *ib., p.* 483.]

No. XI.

CONVEYANCE *of* FREEHOLDS *by the* COMMITTEE [*or* RECEIVER] *of a* LUNATIC [DEFECTIVE] TENANT *for* LIFE.(*c*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), a person of unsound mind, as [not so] found by inquisition [a person unable to manage his affairs], acting by E. F. (hereinafter called the Committee [Receiver]), the Committee [Receiver] of his estate, of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:— Parties.

(1) *or* (2) [*Recite the Vesting Instrument and other matters affecting the legal estate as in Precedents I, II or III of this Group, as the case requires, showing that the land is vested in the Vendor and that the Trustees are the S. L. Act trustees.*] Recitals.

[(3) By an inquisition taken before —— Esqre., K.C., the Master in Lunacy on the —— day of —— under a Commission [Inquisition.]

(*c*) For definitions of "lunatic," "committee" and "defective," see S. L. Act, 1925, s. 117 (1) (xiii). The position is now governed by s. 28, under which orders may be made either generally or in a particular instance. If the order is made "generally" as will, it is conceived, be the practice where further transactions are likely to occur, no further confirming order will be required, nor will it be necessary for the conveyance to be approved by the Master in Lunacy. He will no doubt satisfy himself that the trustees are fit and proper persons and that they and the lunatic or defective are properly represented before he makes a general order. The order may, and unless the estate is being administered in lunacy, no doubt will be confined to the settlement in question. The power to proceed without administering the estate in lunacy is also new. These provisions should result in a saving of costs. Position of lunatic or defective tenant for life under S. L. Act.

Notices must be given under s. 101 to the trustees and their solicitors under an order authorising the same to be given (*Re Ray's S. E.*, 25 Ch. D. 464; 53 L. J. Ch. 205); for certain purposes general notices can be given under that section. If there are no trustees they must be appointed (*Re Taylor* (1883), 31 W. R. 596); save that if no capital money arises, a transaction can be carried out without trustees: s. 110 (4). As to the number of trustees, see s. 94. Notices.

of Lunacy duly issued for that purpose the Vendor was found to be a person of unsound mind :]

Order appointing Committee [Receiver].

(4) By an Order in Lunacy made on the —— day of —— [*Where the order is made solely in relation to the settled land or in relation to a particular settlement insert*—" In the matter of the Settled Land Act, 1925, And in the matter of [certain property in the counties of —— or elsewhere for the time being subject to the trusts of] a Settlement dated, &c. [*or* a settlement created by the Will, &c.] And] In the matter of A. B., a person of unsound mind [not so found] [*or* In the matter of A. B., a person unable to manage his affairs] the Committee [Receiver] was appointed to be the committee of the [person and] [the Receiver of the] estate of the Vendor [solely in relation to [the settled land from time to time subject to] the above-mentioned settlement] [with power to act generally in the name and on behalf of the said A. B. for the purposes of the said Act in relation to the said Settlement and to give notice to the trustees thereunder (to whom all capital money should be paid) and to their solicitors without any further order] [*or* with power to act in the name and on behalf of the said A. B. for the purposes of the said Act, and to give notices to the trustees of the Settlement (to whom all capital money should be paid) and to their solicitors [subject to the transaction being confirmed by order of the Judge or Master in Lunacy] [*or* in relation to the intended sale of, &c., *setting out the intended transaction*]] [*Add if the case* And by the said order it was declared that the said powers might be exercised without administering the estate of the said A. B. in lunacy] :

Agreement for sale.

(5) The Committee [Receiver] has agreed on behalf of the Vendor to sell the property hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—— [subject to the approbation of the Judge or Master in Lunacy] :

[Order approving the transaction.]

[(6) By a further Order made on the —— day of ——, In the matters aforesaid the said Contract was approved] [And the Committee (*d*) [Receiver] was authorised in the name and on behalf of the Vendor to exercise the powers conferred on a tenant for life by the said Act concerning the sale of land and the money arising from such sales was directed to be paid to the Trustees] [And it was ordered that it should be referred to the Master in

(*d*) Even before 1926 orders in general terms were made : *Re Gaitskell* (1889), 40 Ch. D. 416 ; 58 L. J. Ch. 262.

Lunacy to settle and approve of proper conveyances of any property so sold :]

[(7) The Master in Lunacy has, pursuant to the last-mentioned Order, settled and approved of these presents as a proper conveyance to the Purchaser as appears from the seal of the said Master in the margin hereof :] [Approval of conveyance.]

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, As Trustee,(*e*) acting by the Committee [Receiver] and in exercise of the powers conferred by the recited [last-mentioned] Order, and the Settled Land Act, 1925, and of all other powers, hereby conveys unto the Purchaser, Conveyance by Vendor acting by his Committee [Receiver].

All that, &c. (*see Forms, Sec. II, p.* 471, *et seq.*), Parcels.

To hold unto the Purchaser in fee simple discharged, as provided by section seventy-two of the Settled Land Act, 1925. Habendum.

2. The Vendor hereby acknowledges [*continue as in Form No.* 4, *Sec. III, p.* 480, *if required*]. Acknowledgment and undertaking as to documents.

[3. *Add, if required, Certificate, Form No.* 8, *Sec. III, p.* 483.]

In witness, &c. [*Add Schedules if required.*]

(*This deed should be executed by the Committee or Receiver in the name of the lunatic, thus* (*f*)—

A. B., by E. F., his Committee [Receiver].)

The attestation clause will be —

Signed, sealed, and delivered by the within-named A. B., by E. F., his Committee [Receiver], in the presence of ——

(*e*) The vendor will not convey "as beneficial owner" unless he is absolutely entitled subject only to equitable interests which will be overreached : General Conditions of 1925, cl. 27. The committee signs the name of the lunatic: S. L. Act, 1925, s. 26. A committee can, under s. 124 of the Lunacy Act, 1890, on behalf of the lunatic enter into usual and proper covenants, including covenants for title : *Re Ray* [1896], 1 Ch. 468 ; 65 L. J. Ch. 316. If the committee or receiver conveys simply or "As Committee," or "As Receiver," the covenant against incumbrances would be implied under L. P. Act, 1925, s. 76 (1) (*a*).

As to vesting orders in relation to lunatics and defectives who are trustees, see T. Act, 1925, s. 54 ; that Act repeals ss. 135-138 of the Lun. Act, 1890, so far as they relate to lunatic trustees, except where the judge or Master in Lunacy is given concurrent jurisdiction with the High Court. It also repeals Lun. Act, 1911, s. 1, and sub-ss. 3-5 of s. 2 of the Lun. Act, 1922. Vesting orders.

(*f*) S. L. Act, 1925, s. 26 ; see also *Laurie* v. *Lees* (1881), 7 A. C. 19 ; 51 L. J. Ch. 209, as to what is a sufficient execution by a committee.

No. XII.

CONVEYANCE *of* FREEHOLDS *under the* SETTLED LAND ACT *by the* OWNER *of a* BASE FEE,(*g*) *or by other persons having the statutory powers under S. L. Act*, 1925, *s.* 20. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (*owner of the base fee*) (hereinafter called the Vendor), of the

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(*g*) A person within S. L. Act, 1925, s. 20, is now within the definition of "tenant for life" (s. 117 (1) (xxviii)), and must be treated as such for the purposes of L. P. Act, 1925, 1st Sch., Pt. II, para. 5; hence on 1st January, 1926, will acquire the legal estate in the settled land which he is given power to convey, though, before an actual conveyance can be executed, a vesting instrument must be made to evidence his legal title: S. L. Act, 1925, ss. 13 and 18.

Persons having the powers of a tenant for life.

Section 20 only applies where the interest is in "possession" as opposed to being in remainder. The owner of a base fee comes within sub-s. 1 (iii); such an interest is usually created by a tenant purporting to bar the entail without the consent of the protector: F. & R. Act, 1833, s. 34.

Base fees.

The decision in *Re Morshead's S. E.* [1893], W. N. 180, is confirmed by 4th Sch., para. 14, which enacts that it shall be deemed always to have been sufficient to enable the fee simple to be disposed of by the owner of the base fee, if there were, at the time of the transaction S. L. Act trustees of the instrument whereby the estate tail was created, thus removing any doubt whether it was necessary to have trustees appointed of the settlement and disentailing assurance as constituting a compound settlement; this difficulty cannot arise after 1925: (*ib.*, s. 31), for under that section the trustees of the original settlement will remain trustees of any compound settlement consisting of the original settlement and the instruments subsequent in date or operation; when once they have been appointed they or their successors in office remain trustees so long as the settlement is deemed to be subsisting: s. 33. A settlement is deemed to subsist so long as any limitation, charge or power subsists, or there is a minority: s. 3.

Compound Settlements.

Duration of Settlements.

Any person having the statutory powers of a tenant for life has an inalienable right to have the legal estate in the settled land vested in him (s. 106); this is qualified by a saving of the rights of personal representatives for purposes of administration and of the obligations to give legal effect to interests which are paramount to the settlement: s. 8.

Right to legal estate.

The protector may consent after the disentailing assurance is executed and after the death of the tenant in tail: *Whitmore-Searle* v. *W.-S.* [1907], 2 Ch. 332: 76 L. J. Ch. 576. Where several persons are protectors the office devolves on the survivor: *Cohen* v. *Bayley-Worthington* [1908], A. C. 97; 77 L. J. Ch. 363.

Protectors.

Section 32 of the F. & R. Act, 1833 (relating to the appointment of special protectors of settlements), has, as respects settlements made or coming into operation after 1925, been repealed by the L. P. Act, 1925, 7th Sch., hence, as regards future settlements, the tenant for life cannot be ousted by the appointment of a special protector.

Enlargement of base fee.

After the death of the tenant for life the vendor can bar again and create an estate in fee simple subject to a jointure rentcharge, or other family charge. Whether this is done before or after 1926, the owner of the fee simple or of the term of years absolute will, after 1925, have the powers of a tenant for life under S. L. Act, 1925, s. 20 (1) (ix); and there is still a settlement: *ib.*,

Absolute owner subject to family charges.

1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

[*The recitals and operative parts will be similar to those in Precedents I, II or III of this Group of Precedents, as the case may require, save that when referring to the settlement in the recital of the Vesting Instrument reference will also in the case of a base fee be made to the Disentailing Assurance creating the base fee. Care must be taken to obtain and recite Counsel's Certificate as to the correctness of the Vesting Instrument in every case coming within S. L. Act*, 1925, *s.* 110 (2) *provisoes* (*a*), (*b*), (*c*), (*d*).]

IN WITNESS, &c.

No. XIII.

CONVEYANCE *of* FREEHOLDS *under the* SETTLED LAND ACT *by a* TENANT *by the* CURTESY,(*h*) *a person within s.* 20 *of the S. L. Act*, 1925. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (*tenant by the curtesy*) (hereinafter called the Vendor), of the Parties.

s. 1 (1) (v). Before 1926 it was held in England that such an owner lost his statutory powers, but a contrary decision was given in Ireland.

This amendment may have a far-reaching effect, for purchasers who before 1926 have acquired lands subject to family charges will become tenants for life and before they can make title must prove that the family charges have been discharged or in default obtain an appointment of S. L. Act trustees (if there are none) with the aid of the persons interested in the family charges or obtain an order appointing trustees, and then require the necessary vesting instrument to be made. This will adversely affect persons who, in the past have accepted titles which were unnecessarily defective. After 1925 a purchaser will refuse to accept a conveyance which does not pass the legal estate: L. P. Act, 1925, s. 42. It is an open question whether the settlement creating the charge before 1926 and the conveyance to the purchaser create a compound settlement, see S. L. Act, 1925, ss. 31 and 117. Purchaser subject to family charges.

Where the charges or other equitable interests have been created for money's worth the case does not come within S. L. Act, 1925, s. 20, but s. 21 applies. Hence to comply with a requisition of a purchaser under L. P. Act, 1925, s. 42 (which confers a right to have title made in the best way), the vendor must either create a trust for sale *ad hoc* (*ib.*, s. 2) or a settlement *ad hoc* under S. L. Act, 1925, s. 21. Absolute owner subject to charges, &c., created for money's worth.

(*h*) Tenancy by the curtesy is abolished where the wife dies after 1925 by Ad. of E. Act, 1925, s. 45, save that under sub-s. (2) this does not affect the devolution of an entailed interest: see also L. P. Act, 1925, s. 130 (4), which expressly saves the equitable right of the husband to succeed under an entailed interest. Also under Ad. of E. Act, 1925, s. 51 (2), the husband of a lunatic living and of full age on 1st January, 1926, who dies intestate, may become entitled by the curtesy. Thus S. L. Act, 1925, s. 20 (1) (vii), is not confined exclusively to devolution on a death before 1926. By sub-s. 3 the estate or interest of a tenant by the curtesy is deemed an estate or interest arising under a settlement made by his wife. It is one of the freak cases within s. 110 (2), hence counsel's certificate should be obtained when the vesting instrument Tenant by the curtesy

1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS :—

Recitals and Operative Parts.

[*The recitals and operative parts will be on the same lines as those in Precedents I, II or III of this Group, but in this case the Settlement when referred to in the Vesting Instrument will be*—" a settlement deemed to be subsisting under the Settled Land Act, 1925, and made by —— (*the wife*)." *Counsel's certificate as to the correctness of the Vesting Instrument should be recited. If the Wife had power to dispose of the land by her will, but died intestate as to the land in question, her personal representatives will be the S. L. Act Trustees* (*s.* 30 (3)); *but if the court has appointed S. L. Act Trustees, then the Deed declaring who are the trustees must be executed by such person as the court may direct: s.* 35 (2). *And see notes to last Precedent.*]

IN WITNESS, &c.

No. XIV.

CONVEYANCE *of* FREEHOLDS *where the* SALE *and* PURCHASE *are both made under the* POWERS *of the* S. L. ACT, *being a subsidiary Vesting Deed.*(*i*) (*Legal Estate.*)

Parties.

THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. X., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (*trustees of the Vendor's*

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is executed by the personal representatives of the wife (s. 30 (3)) or by trustees appointed by the court: s. 34. As a tenant in tail in possession is given power after 1925 to dispose by will of entailed interests in possession (L. P. Act, 1925, s. 176), it is not incorrect (if the wife had power to make a will under this section) to say that for the purposes of S. L. Act, 1925, s. 34 (3), the " settlement has arisen by the effect of an intestacy."

Entailed interests.

The old law.

To entitle a husband to an estate by the curtesy there must have been issue of the marriage born alive and capable of inheriting: Dissertation on Husband and Wife, Vol. III. If the land after 1897 devolved on the administrator under L. T. Act, 1897, Pt. I, he conveyed it to the use of the husband for life with remainder to the use of the heir in fee simple. After 1925 an assent can be given under Ad. of E. Act, 1925, s. 36, as respects land vested in personal representatives, for that section applies whether the testator or intestate died before or after 1926.

Assents after 1925.

Subsidiary vesting deeds.

(*i*) The machinery for a subsidiary vesting deed is supplied by S. L. Act, 1925, s. 10. Under that section it has to contain: First, particulars of the last or only principal vesting instrument (see the recital); secondly, a statement that the land is to be held on the same trusts as the land comprised in the principal vesting instrument; thirdly, the names of the S. L. Act trustees; and fourthly, the name of any person for the time being entitled to appoint new trustees of the settlement. The statements and particulars can be incorporated by reference to an existing vesting instrument: s. 5 (2). If the additional powers are set out in full (s. 5 (1) (*d*)), the subsidiary deed can be treated as an

Settlement) (hereinafter called the X. Trustees), of the 2nd part, C. Y., of, &c. (*tenant for life*), (hereinafter called the Purchaser), of the 3rd part, and K., of, &c., and L., of, &c. (*trustees of the Purchaser's Settlement*) (hereinafter called the Y. Trustees), of the 4th part: WHEREAS:—

Recitals as respects the Vendor's title.

[*The recitals as respects the Vendor's title will be the same as those in Precedents Nos. I, II or III of this Group according to the circumstances of the case, save that in place of references to* "the Trustees" *the references will be to* "the X. Trustees."]

The Principal Vesting Instrument of the Purchaser.

(3) These presents are supplemental to a Vesting Deed [Assent] hereinafter called "the Principal Vesting Instrument" dated, &c., and made, &c., whereby certain freehold property at—— was conveyed to [was stated to be vested in] the Purchaser in fee simple upon the trusts of a Will, dated, &c. [*or* a Settlement, dated, &c.] (hereinafter referred to as the Y. Settlement) and whereby it was declared First that the Y. Trustees were the trustees of the Y. Settlement for the purposes of the Settled Land Act, 1925 Secondly that certain additional or larger powers were conferred by the Y. Settlement in relation to the settled land (which powers were therein set forth) And thirdly that the power to appoint a new trustee or new trustees of the Y. Settlement was vested in the Purchaser during his life:

Capital money in hands of Y. Trustees.

(4) The Y. Trustees as such trustees as aforesaid have in their hands capital money liable to be laid out in the purchase of land to be made subject to the trusts referred to in the Principal Vesting Instrument:

Agreement for sale and direction to apply capital money.

(5) The Vendor has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— and the Purchaser has directed the Y. Trustees to apply part of the said capital money in payment of the said purchase-money:

NOW THIS DEED WITNESSETH as follows:—

Conveyance

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Y. Trustees by the direction of the Purchaser to the X. Trustees as such trustees as aforesaid (the receipt of which sum the X. Trustees hereby acknowledge) the Vendor, in exercise of the power for this purpose conferred

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independent root of title apart from the principal deed. Only when particulars are incorporated by reference and these particulars are material to the transaction to be carried out will there be need to make use of the principal vesting instrument.

Supplemental documents.

As to supplemental documents, see L. P. Act, 1925, s. 58.

on him by the Settled Land Act, 1925, and of all other powers, and As Trustee, hereby conveys unto the Purchaser: (*j*)

Parcels. ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum. TO HOLD unto the Purchaser in fee simple, discharged as respects the X. Settlement as provided by section seventy-two of the Settled Land Act, 1925; and so discharged upon and subject to the same trusts and powers as the land comprised in the Principal Vesting Instrument.

Acknowledgment and undertaking as to documents. [2. THE Vendor hereby acknowledges *continue as in Form No.* 4, *Sec. III, p.* 480, *if required*].

[3. *Add Form No.* 8, *p.* 483, *if required.*]

Vesting deed provisions. 4. THE Purchaser and the Y. Trustees hereby declare as follows:—

(1) The Purchaser shall stand possessed of the property hereby conveyed upon and subject to the same trusts and powers as are declared by the Principal Vesting Instrument by reference or otherwise as aforesaid with respect to the property therein comprised.

[*If the additional powers are short it will be worth while to restate them here.*]

(2) The Y. Trustees are the trustees of the Y. Settlement for the purposes of the Settled Land Act, 1925.

(3) The power of appointing a new trustee or new trustees of the Y. Settlement is vested in the Purchaser during his life.

IN WITNESS, &c. [*Add Schedules as required.*]

No. XV.

CONVEYANCE *of* FREEHOLDS *where the* S. L. ACT TRUSTEES *have the statutory powers as* "STATUTORY OWNERS," *there being no* TENANT *for* LIFE *within the meaning of the* ACT.(*k*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN M., of, &c., and N., of, &c. (*the trustees*) (hereinafter called the Vendors), of the

To whom land must be conveyed. Sale by trustees or other statutory owners where no tenant for life.

(*j*) In all cases the land acquired with capital money must after 1925 be conveyed to the tenant for life of full age or if none to the statutory owners: S. L. Act, 1925, s. 10 (1). For a form of a subsidiary vesting deed, see *ib.*, 1st Sch., Form No. 4.

(*k*) This Precedent operates under S. L. Act, 1925, s. 23. It assumes that no persons have, by the settlement itself, been given the statutory powers, as is frequently done where there is a discretionary trust. If these persons are not the S. L. Act trustees, the settled land must be vested in them as the "statutory owners," they will be the vendors, and the S. L. Act trustees will also join to receive the purchase-money. Whoever are the "statutory owners"

one part, and X. Y., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS :—

Vesting Deed for giving effect to a Will or Settlement coming into operation before 1926.

(1) By a Vesting Deed, dated, &c., under the hands and seals of the Vendors they pursuant to the Law of Property Act, 1925, declared as follows First that the property hereinafter described (with other property) was vested in themselves in fee simple upon the trusts and subject to the powers and provisions upon and subject to which the same ought from time to time to be held under the Will, dated, &c., and proved on, &c., by the Vendors of X. Y., who died on the [*or* under the Settlement dated, &c., and made, &c.] or otherwise And secondly that the Vendors were the trustees of the said Will [*or* said Settlement] for the purposes of the Settled Land Act, 1925:

Counsel's Certificate.

(2) By Counsel's Certificate, dated, &c., it was certified that at the date of the recited Vesting Deed First the land therein described (including the property hereinafter described and the fee simple thereof in possession free from incumbrances) was comprised in the said Will [*or* said Settlement] Secondly at the date aforesaid the Vendors were the persons in whom the same ought to be vested as Statutory Owners And thirdly

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"Statutory owners" not being S. L. Act trustees.

will on 1st January, 1926, acquire the legal estate in the settled land (L. P. Act, 1925, 1st Sch., Pt. II, para. 5), but a vesting instrument must also be executed to evidence the transfer of the legal estate.

Parliamentary entails.

Section 23 also gives the powers to the trustees of settlements creating Parliamentary unbarrable entails, but in this case the tenant-in-tail's consent should be obtained though a purchaser will not be concerned therewith: sub-s. 2.

For the cases in which there is no tenant for life, see *Re Atkinson* (1885), 30 Ch. D. 605; aff. 1886, 31 *ib.*, 577; 55 L. J. Ch. 49; (discretionary trust): *Re Tessyman's S. E.* [1897], 42 Sol. J. 96. Compare the case where a life interest in the rents and profits is given subject to the beneficiary maintaining children: *Williams* v. *Jenkins* [1893], 1 Ch. 700; 62 L. J. Ch. 665; *Re Theaker's S. E.* [1898], T. No. 1250 (in Chambers, 8th August, 1898); *Re Pollock* [1906], 1 Ch. 146; 75 L. J. Ch. 120.

Infant contingently entitled.

There is a "settlement" if a person is only contingently entitled (S. L. Act, 1925, s. 1 (1)! (iii),) but there is no tenant for life (*Re Liddell* (1882), 52 L. J. Ch. 207; *Re Sparrow's S. E.* [1892], 1 Ch. 412; 61 L. J. Ch. 260); hence this case comes within s. 23. There is, however, a tenant for life if a child takes the rents and profits until another attains a vested interest: *Re Walmsley's S. E.* [1911], 105 L. T. 332; 58 Sol. J. 600.

Express power of sale useless for making title.

Save that, where there is no tenant for life, the settlement can confer the statutory powers on named persons, and so constitute them "statutory owners," no express power of sale (as opposed to a trust for sale) is of any avail for making title to a legal estate; it can only operate to confer additional powers on the tenant for life (ss. 108-9) or to make the donees into S. L. Act trustees: s. 30. The estate owner must convey, powers only affect equitable interests: L. P. Act, 1925, s. 1 (7), subject to the special exceptions in ss. 7 to 9.

that the Vendors were at the date aforesaid the trustees of the said Will [*or* said Settlement] for the purposes of the Settled Land Act, 1925.

Agreement for sale.

(3) The Vendors as such Estate Owners and trustees as aforesaid have agreed to sell the property hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—— :

NOW THIS DEED WITNESSETH as follows :—

Conveyance by statutory owners.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the powers for this purpose conferred on them by the Settled Land Act, 1925, and of all other powers hereby, As Trustees, convey unto the Purchaser :

Parcels.

All those, &c. (*see Forms in Sec. II, p.* 471, *et seq*).

Habendum.

To hold unto the Purchaser in fee simple discharged as provided by section seventy-two of the said Act.

[2. *Add acknowledgment for production of documents, Form No.* 4, *p.* 480, *if required.*]

[3. *Also Form No.* 8, *p.* 483, *if required.*]

In witness, &c.

No. XVI.

CONVEYANCE *of* Freeholds *by an* Absolute Owner *free from* Equitable Interests *created for money's worth by virtue of a* Settlement *made under s.* 21 *of the Settled Land Act*, 1925. (*Legal Estate.*) (*l*)

Parties.

THIS CONVEYANCE is made, &c., Between A. B., of, &c. (hereinafter called the Vendor), of the 1st part, The —— Bank

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The over-reaching of equitable interests by a Settlement *ad hoc.*

(*l*) S. L. Act, 1925, s. 21, is not available if family charges or powers of charging subsist under a "settlement" (ss. 1, 3, 9, 20 (3)), for in such cases there must be a tenant for life or a person having the powers of a tenant for life under ss. 19, 20, 22, 23, 25, 26 or 28 (see in particular s. 20 (1) (ix) under which a person beneficially entitled to land for an estate in fee simple or term of years absolute subject to any interests, charges or powers subsisting under a settlement has the power of a tenant for life). In such cases title must be made under the subsisting settlement, a new settlement *ad hoc* cannot be created.

Equitable interests which cannot be over-reached.

The equitable interests which cannot be overreached in this way are set out in sub-s. 2 of s. 21, and include a mortgage by deposit, a restrictive covenant, a contract to convey a legal estate and a limited number of the interests protected by registration under the L. C. Act, 1925, the general principle being to exclude interests which cannot be properly represented in terms of the proceeds of sale.

Limited, whose registered office is at —— (*a Trust Corporation*) (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS—

Seisin subject to equitable interests created for money's worth.

(1) Immediately before the date of the Vesting Instrument next hereinafter mentioned the Vendor was seised of the property hereinafter described (with other property) for an estate in fee simple in possession subject to the equitable interests mentioned in the Trust Instrument hereinafter referred to but otherwise free from incumbrances:

Vesting Deed under S. L. Act, 1925, s. 21.

(2) By a Vesting Deed, dated, &c., and made between the Vendor of the one part and the Trustees of the other part, pursuant to section twenty-one of the Settled Land Act, 1925, the Vendor declared as follows: First, that the said property was vested in him Upon trust to give effect to all equitable interests and powers affecting the legal estate to which he was

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Rights of Purchaser to the best title.

There is nothing to prevent a vendor selling expressly subject to equitable interests which cannot be overreached. But under L. P. Act, 1925, s. 42, a purchaser has just as much a right to require that a settlement shall be created *ad hoc* (though the vendor has an option to create a trust for sale *ad hoc* under s. 2 of that Act) in order to overreach equitable interests, as he has a right (which should always be exercised otherwise the legal estate will not pass) to require title to be made under the S. L. Act, when there is a subsisting settlement. There is, however, this difference, that if there is no subsisting settlement the vendor will be able to convey the legal estate without creating a settlement or trust for sale *ad hoc*, for in this case ss. 13 and 18 of the S. L. Act, 1925, do not apply.

Trust Instrument not always required.

Where the estate owner acquires his estate under an instrument, that instrument, and the instrument (if any) under which the equitable interests or powers are subsisting, are deemed to be the trust instrument, hence a new trust instrument of even date with the vesting deed will seldom be required: s. 21 (1) (*b*).

Object to improve titles.

There can be no question that of recent years the general average of titles to land has deteriorated in quality. It is sought by the overreaching provisions (exercisable by tenants for life, trustees for sale and personal representatives) to improve the quality of titles. The mere power to give good titles was, however, found to be insufficient in practice, hence the only remedy left was (L. P. Act, 1925, s. 42) to give a purchaser an inalienable right to have title made in the best way available.

Appointment of trust corporation.

When a settlement is made under S. L. Act, 1925, s. 21, the practice no doubt will be to appoint a "trust corporation" (s. 117 (1) (xxx)), such as the Public Trustee, or a Bank or Insurance Society (authorised to act as a custodian trustee), for this will generally be cheaper in the end than obtaining an order of the court approving two or more (not exceeding four) individuals. Special terms may be arranged with a Bank, &c., for accepting such trusts, for the duties are not onerous.

Vendor to give full covenants.

In conveyances under s. 21 the vendor should convey "as beneficial owner" without any qualification, for he will be an absolute owner either of the fee simple or term of years absolute, subject only to the equitable interests which will be discharged and to any legal estates subject to which the conveyance will be expressly made.

entitled as aforesaid And secondly, that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 :

Trust Instrument.

[(3) By a Trust Instrument bearing even date with and made between the same parties as the recited Vesting Instrument the Vendor declared that he would stand possessed of the said property Upon trust for giving effect to the equitable interests [and powers] therein described which were capable of being overreached under the said section and subject thereto In trust for himself in fee simple And the Trustees were appointed to act as trustees of the said Trust Instrument for the purposes of the said Act :]

Counsel's Certificate on the creation of a Settlement under s. 21 of the S. L. Act, 1925.

(4) By Counsel's Certificate, dated, &c., it was certified First, that the property comprised in the said Vesting Instrument [and Trust Instrument] was property belonging to the Vendor in fee simple in possession subject to equitable interests [or powers] capable of being overreached under section twenty-one of the Settled Land Act, 1925, and not charged on the said property in the manner referred to in paragraph (v) of sub-section (1) of section one of the said Act And secondly, that the Trustees were properly constituted by the Vendor as trustees of the Settlement for the purposes of the said Act :

Agreement for sale.

(5) The Vendor as such estate owner as aforesaid has agreed to sell the property hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—— :

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Act, 1925, and of all other powers, and As Beneficial Owner, hereby conveys unto the Purchaser :

Parcels.

All those, &c. (*see Forms in Sec. II, p.* 471, *et seq.*) :

Habendum.

To hold unto the Purchaser in fee simple discharged as provided by section seventy-two of the said Act.

2. (*Add acknowledgment for production of documents and undertaking for safe custody, Form No.* 4, *Sec. III, p.* 480, *supra.*)

[3. *Also Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.

GROUP F.—CONVEYANCES ON SALE BY TRUSTEES HOLDING LAND ON TRUST FOR SALE.(*a*)

No. I.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *for* SALE *under a* SETTLEMENT *by way of* TRUST *for* SALE. VARIATIONS *where the* TRUST *for* SALE *is created by a* WILL.(*b*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of the 1st part, E. F., of, &c., and J. F., his wife, of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Registered land.

(*a*) In the case of registered land, the trustees will always be registered as proprietors: L. R. Act, 1925, s. 94; the conveyance will be by transfer in the ordinary form, without recitals and the Precedents in this group will not apply; save that if the last precedent in this group is used it will first be made off the register, and will be followed by a transfer to the trustees, and an application on the sale to warn off or remove any entry protecting the minor interest to be overreached.

Trusts for sale.

(*b*) See L. P. Act, 1925, ss. 23—38; 1st Sch., Pts. III to VI; T. Act, 1925, ss. 12—14. In this Precedent the case is taken of a sale during the lives of the persons entitled to life interests in the rents and profits till sale or the income of the proceeds of sale.

Duration.

Under the L. P. Act, 1925, s. 23, a trust for sale remains on foot in favour of a purchaser until the land is conveyed to or by the direction of the beneficiaries. This applies to sales made before or after the Act without prejudice to any order restraining the sale. But the original trust may be bad as infringing the rule against perpetuities: *Re Appleby* [1903], 1 Ch. 565; 72 L. J. Ch. 332, and cases therein cited.

Power to postpone.

Where trustees for sale have power (*ib.*, s. 25) to postpone sale, the vesting in possession of the share of one beneficiary did not, even before 1926, entitle that beneficiary to call for an immediate sale or for a conveyance of his share in the land: *Re Horsnaill* [1909], 1 Ch. 631; 78 L. J. Ch. 331; *Re Kipping* [1914], 1 Ch. 62; 83 L. J. Ch. 218.

Absolute vesting.

After 1925 there can be no conveyance of the land to the beneficiaries in undivided shares; but if all of them are *sui juris* absolutely entitled they can require the land to be conveyed to them or to not more than four of them on trust for sale: L. P. Act, 1925, ss. 3 (1) (*b*) (ii); 34 (2).

Number of trustees.

There must be at least two individuals to act as trustees unless the trustee is a trust corporation (*ib.*, s. 27); the number cannot be increased beyond four: T. Act, 1925, s. 34. The overreaching powers of a tenant for life are conferred on trustees for sale: L. P. Act, 1925, s. 28, see also *ib.*, s. 2. As to the trusts on which the proceeds will be held to give effect to interests which are overreached: *ib.*, s. 3.

Powers of sale, under the old law.

The duration of a power of sale was, if the rule against perpetuities was not infringed, a question of intention: *Re Jump* [1903], 1 Ch. 129; 72 L. J. Ch. 16; see also *Re Lord Sudeley and Baines* [1894], 1 Ch. 334; 63 L. J. Ch. 194; *Re Dyson and Fowke* [1896], 2 Ch. 720; 65 L. J. Ch. 791; and see *Re Kaye and Hoyle* [1909], 53 Sol. J. 520. But after 1925 powers of sale (as opposed to trusts for sale) will be useless, save for the purpose of constituting S. L.

Conveyance on trust for sale.

(1) By a Conveyance dated the —— day of —— (*continue Form No.* 15, *Sec. I, p.* 460):

[Variation: Recital of Assent.]

[By an Assent (*continue Form No.* 16, *Sec. I, p.* 460(*c*))]:

(2) The Vendors (*Form No.* 17, *Sec. I, p.* 460):

NOW THIS DEED WITNESSETH as follows:—

Agreement for sale.

Conveyance by trustees for sale.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees [and with the consent of the said E. F. and J. F. (*d*) testified as aforesaid] hereby convey unto the Purchaser

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Act trustees (S. L. Act, 1925, s. 30); or for enlarging the powers of a tenant for life: *ib.*, s. 109.

(*c*) This Form of Assent takes the case of a mere trust for sale without requests to sell being necessary, but can, of course, be readily adapted to meet the case where requests are required.

Consents on a sale by trustees for sale.

(*d*) As to the consents which a purchaser dealing with trustees for sale will require to be given: L. P. Act, 1925, s. 26 (1) (not more than the consents of two persons required under an express provision); s. 26 (2) (purchaser not concerned with consents on behalf of persons under disability), see also s. 28. If a person who is giving a consent has incumbered his interest the consent of the incumbrancer will be required: *Re Bedingfeld and Herring* [1893], 2 Ch. 332; 62 L. J. Ch. 430. *Semble* a purchaser will not be concerned therewith (s. 26); even in the case of settled land a purchaser is not concerned with the consent of an incumbrancer of the life interest: S. L. Act, 1925, s. 104 (4) (5).

Covenants for title by beneficiaries on sales by trustees where their consent to the sale is necessary.

Where, as in the case of a conveyance on trust for sale, the trusts are kept off the title, it is unreasonable that the persons who request a sale should give covenants for title when the trustees sell. The purchaser is not entitled to go into the settlement of the proceeds of sale, and accordingly has not notice as to the interests of the persons directing the sale. Even in the case of a Will where the trusts are disclosed, it seems that covenants for title should not be given after 1925, for the purchaser under L. P. Act, 1925, s. 27 (1), is not concerned with the trusts affecting the proceeds "whether or not those trusts are declared by the same instrument by which the trust for sale is created." If the testator dies after 1925 there will be an assent in writing on trust for sale and the purchaser will not investigate the trusts of the Will. On the other hand, if the trustees for sale are beneficially and absolutely entitled themselves (*e.g.*, in the case of partners or other beneficial owners holding as joint tenants on trust for sale), they should convey "as beneficial owners" without qualification. This is the practice laid down in the General Conditions of 1925. Under the old practice the conditions of sale nearly always provided, where there was a trust for sale, that the purchaser should not be entitled to covenants from the beneficiaries. Apart from such a condition, according to the decisions in *Earl Poulett* v. *Hood* (1868), L. R. 5 Eq. 115; 37 L. J. Ch. 224; *Re Sawyer and Baring* (1884), W. N. 192; 53 L. J. Ch. 1104; and see Dart, 7th ed., 569; Williams' V. & P. 3rd ed., 615, it would seem that the purchaser could have called for such covenants. This did not apply on a sale by the court (*Cottrell* v. *C.* (1866), L. R. 2 Eq. 330; 35 L. J. Ch. 466), as the purchaser was only concerned to see that the person in whom the legal estate was vested conveyed and that the equities were bound by the order.

ALL THOSE, &c. (*see Forms in Sec. II, pp.* 471, *et seq.*), Parcels.

TO HOLD unto the Purchaser in fee simple, discharged from all the trusts, powers, and provisions affecting the proceeds of sale. Habendum.

2. (*Acknowledgment for production of documents, Form No.* 4, *Sec. III, p.* 480.) Documents.

[*Add Form of Certificate, No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

No. II.

CONVEYANCE *of* ENFRANCHISED LAND *on a* SALE *by* TRUSTEES *under a* TRUST *for* SALE *in a* SETTLEMENT. VARIATIONS *where the* TRUST *for* SALE *is created by a* WILL (*Legal Estate.*) (*e*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of the 1st part, E. F., of, &c., and J. F., his wife, of the 2nd part and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:— Parties.

(1) (2) (3) (*Recite the Settlement, the Admission and the effect of the vesting provisions of the L. P. Acts*, 1922 *and* 1925, *Form No.* 25, *Sec. I, p.* 465): Settlement admittance of Vendors and vesting provision.

[(1) (2) (3) (4) (*Recite the Will, the Admission and the effect of the vesting provisions, Form No.* 27, *Sec. I, p.* 467 (*f*)]: Will, probate, and admittance of Vendors and vesting provisions.

(5) By a Compensation Agreement, dated, &c., and made, &c. (*the parties will be the lord of the manor, E. F. and J. F., if their consent to a sale is required and the Vendors*), it was, pursuant to the Law of Property Act, 1922, agreed (*continue Form No.* 20, *Sec. I, p.* 461, *showing whether or not the lord's rights in minerals and sporting rights have been acquired*). Compensation agreement.

(6) By a Receipt, &c. (*continue Form No.* 20 *aforesaid*). Receipt on compensation agreement.

(7) The Vendors, as such trustees as aforesaid, have [at the request of the said E. F. and J. F. (testified by their execution hereof)] agreed to sell the property hereinafter described to the Purchaser [subject to the [manorial incidents saved until extinguishment by the Law of Property Act, 1922] rights to minerals, sporting rights and other rights preserved to the lord Agreement for sale.

(*e*) If the manorial incidents have not been extinguished this conveyance must be produced to the steward within six months for endorsement and the customary payments must be made: L. P. Act, 1922, s. 129. Endorsement by steward of the manor

(*f*) This Form takes the case of a trust for sale without consent being necessary; but can, of course, be readily adapted to meet the case where consents are required to the sale.

by the said Act of 1922, but otherwise (*g*)] free from incumbrances for an estate in fee simple in possession at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance of enfranchised land.

1. In pursuance, &c. (*as in last Precedent*), the Vendors, As Trustees [and with the consent of the said E. F. and J. F. (testified as aforesaid)], hereby convey unto the Purchaser

Parcels.

All, &c. (*as in the case of freeholds, the mineral and sporting rights can be excepted*),

Habendum.

To hold unto the Purchaser in fee simple, discharged from all the trusts and powers affecting the proceeds of sale, but subject to [First the manorial incidents saved until extinguishment by the Law of Property Act, 1922, and Secondly] [the rights to minerals, sporting rights and other rights preserved to the lord of the said manor by the Twelfth Schedule to the Law of Property Act, 1922 (*g*)].

2. (*Add acknowledgment for production of documents, Form No.* 4, *Sect. III, p.* 480, *supra.*)

[3. *Also Form No.* 8, *p.* 483, *if required.*]

In witness, &c.

No. III.

ASSIGNMENT *of* Leaseholds *by* Trustees *for* Sale *under a* Settlement *by way of* Trust *for* Sale. Variations *where the* Trust *for* Sale *is created by a* Will.(*h*) (*Legal Estate.*)

Parties.

THIS ASSIGNMENT is made, &c., Between A. B., of, &c., and C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of the 1st part, E. F., of, &c., and J. F., his wife, of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: Whereas:—

Lease.

(1)—(4) By a Lease (*Form No.* 28, *Sec. I, p.* 468):

Manorial incidents, rentcharge, lord's rights.

(*g*) If the manorial incidents have been extinguished by a compensation agreement, by notice or by effluxion of time, they will not be referred to. If, however, a compensation rentcharge has been made payable in lieu thereof, this must be mentioned in the habendum. If the lord's rights to minerals, sporting rights, &c., have, by consent, been included in the compensation agreement (if any) this will be shown in the recital.

Leaseholds in lots.

(*h*) Trustees who are selling leaseholds in lots held under one lease can grant underleases to the several purchasers: *Re Judd and Poland* [1906], 1 Ch. 684; 75 L. J. Ch. 403; and see General Conditions of 1925.

[(2)—(4) By an Assignment dated the —— day of —— (*continue as in Form No.* 31, *Sec. I, p.* 470 (*i*)] : [Assignment *or* Will with an assent on trust for sale.]

(5) The Vendors, as such trustees as aforesaid, have [with the consent of the said E. F. and J. F. testified by their execution of these presents], agreed to sell to the Purchaser free from incumbrances the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £—— : Agreement for sale.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement, &c. (*as in Precedent I of this Group*), the Vendors, As Trustees [and with the consent of the said E. F. and J. F. (testified as aforesaid)], hereby assign unto the Purchaser Assignment by trustees for sale.

ALL the premises comprised in and demised by the recited Lease, Parcels.

TO HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed But discharged from all the trusts affecting the proceeds of sale.

2. THE covenants implied under section seventy-seven (1) (C) of the Law of Property Act, 1925, are incorporated in these presents. Covenant by Purchaser to pay rent, &c.

3. THE Vendors hereby acknowledge (*Form No.* 4, *Sect. III, p.* 480). Documents.

[4. *Also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

No. IV.

CONVEYANCE *of* FREEHOLDS, ENFRANCHISED LAND *and* ASSIGNMENT *of* LEASEHOLDS *by* TRUSTEES *for* SALE (*one of whom is a* MARRIED WOMAN *who acquired the property after* 1882) *under a* TRUST *for* SALE *in a* WILL *created for purposes of division.* (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., the wife (*j*) of L. D., of, &c. (hereinafter called the Parties.

(*i*) The necessary variations in the case of a Will are given in this Form. If the testator dies after 1925 there will be no recital of the Will. Instead, his death and probate will be recited with an assent on trust for sale ; in this case the purchaser is not concerned with the trusts of the Will. The same rule applies if the property remains vested in personal representatives on 1st January, 1926. Variation if testator dies after 1925.

(*j*) After 1907 it has not been necessary for the husband of a married woman trustee (married or acquiring the property after 1882) to concur in order to Married woman trustee.

Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Lease. (1) By a Lease (*Recite Lease to* X. Y., *Form No.* 28, *Sec. I, p.* 468):

Will. (2) The said X. Y., being at his death seised of the freehold property first hereinafter described for an estate in fee simple in possession and of the property secondly hereinafter described for an estate of inheritance in possession in accordance with the custom of the Manor of ——, in the County of ——, and as to all the said property free from incumbrances, duly made his Will dated the —— day of —— and thereby, after appointing the Vendors to be his executors and trustees, devised and bequeathed all his real and personal estate (including the said freehold, copyhold, and leasehold property) to the Vendors Upon trust to sell (*k*) the same and to stand possessed of the net proceeds of such sale upon the trusts therein mentioned:

Death of testator and probate. (3) The said testator died on the —— day of —— without having revoked or altered his said Will, which was on the —— day of —— duly proved at the —— Probate Registry by the Vendors:

Admittance of Vendors to copyholds. (4) On the —— day of —— the Vendors were duly admitted to the said copyhold property, to hold to them and their heirs by copy of court roll at the will of the lord according to the custom of the said Manor by and under the rents, suits and services therefor due and of right accustomed:

Enfranchisement. (5) By virtue of the Law of Property Act, 1922, 12th Schedule, paragraph 8 (v), and the Law of Property Act, 1925, 1st Schedule, Part II, the property secondly hereinafter described became (subject to the manorial incidents and other rights reserved to

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convey any legal estate (L. P. Act, 1925, s. 170, reproducing with amendments M. W. P. Act, 1907, s. 1), the latter section was sufficient to meet the decision in *Re Harkness and Allsopp* [1896], 2 Ch. 358; 65 L. J. Ch. 726, on the ground that the power to dispose of property apart from her husband of necessity implied a power for her to acquire and hold property in like manner, so that the husband would take no interest: *Re Leslie* [1911], 1 Ch. 611; 80 L. J. Ch. 486.

Implied trust for sale after purchase in breach of trust. (*k*) If the testator had died after 1925 the Will would not have been recited, the assent by the executors on trust for sale would have taken its place. The case is taken here of an absolute trust for sale. As to the former duration of a power of sale for purposes of division, see *Peters* v. *Lewes, &c. Ry. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 839; and first note to Prec. I, of this Group. Sometimes it is found that trustees are selling when they have purchased the property in breach of trust and have a mere power to vary investments. In such a case the property becomes stamped with an implied trust for sale which the purchaser can rely on: L. P. Act, 1925, s. 32.

the lord) vested in the Vendors in fee simple on trust to sell the same as aforesaid:

(6) No compensation agreement or notice for extinguishing the said manorial incidents has ever been entered into or served.(*l*) Manorial incidents not extinguished.

(7) The Vendors have agreed to sell to the Purchaser free from incumbrances (save as hereinafter mentioned) the freehold and enfranchised lands hereinafter described and the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £——: Agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees, hereby convey unto the Purchaser Conveyance of freeholds.

First All those freehold lands, &c. (*see Forms in Sec. II, p.* 471, *et seq*). Parcels.

And Secondly All those enfranchised lands, &c.,

To hold unto the Purchaser in fee simple, discharged from all the trusts affecting the proceeds of sale, but subject as to the property secondly hereinbefore described to the manorial incidents and other rights reserved to the lord of the said manor by the Law of Property Act, 1922. Habendum.

2. In further pursuance of the said agreement and for the consideration aforesaid, the Vendors, As Trustees, hereby assign unto the Purchaser, Assignment of leaseholds.

All the premises comprised in and demised by the recited Lease, Parcels.

To hold unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed But discharged from all the trusts affecting the proceeds of sale. Habendum.

3. The covenants implied under section seventy-seven (1) (c) of the Law of Property Act, 1925, are incorporated in these presents. Covenant by Purchaser to pay rent, &c.

(*l*) Thus it will be necessary for this conveyance to be endorsed by the steward of the manor within six months, pursuant to L. P. Act, 1922, s. 129.

Documents.

4. THE Vendors hereby acknowledge (*Form No.* 4, *Sec. III*, *p.* 480).

[5. *Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.(*m*)

No. V.

CONVEYANCE *by* TRUSTEES *for* SALE *of the* SURFACE *of* FREEHOLDS *apart from* MINES *and* MINERALS, *under their* STATUTORY POWERS.(*n*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of the 1st part, E. F., of, &c., and J. F., his wife, of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Conveyance on trust for sale.

(1) By a Conveyance dated the —— day of —— (*continue Form No.* 15, *Sec. I*, *p.* 460) (*o*):

Agreement for sale.

(2) The Vendors, as such trustees as aforesaid, have [with the consent of the said E. F. and J. F., testified by their execution of these presents] agreed to sell to the Purchaser free from incumbrances the surface of the property hereinafter described, with such reservations as hereinafter appearing, at the price of £——:

Conveyance of surface with reservations of mines and minerals.

NOW THIS DEED WITNESSETH as follows:—(*continue operative part as in Precedent I of this Group, but using for the parcels Form No.* 2, *Sec. II*, *p.* 471, *including the reservation of right to work minerals; and see notes to that Form*). *The habendum will be* "TO HOLD (except as aforesaid) unto the Purchaser in fee simple. But reserving unto the Vendors in fee simple the easements rights and privileges hereinbefore expressed to be reserved and so that the same shall become subject to the trust for sale

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Abolition of acknowledgments by married women.

(*m*) No deed has to be acknowledged by a married woman after 1925: L. P. Act, 1925, s. 167. But in the Precedent it is assumed that the husband need not join as the trust property was acquired after 1882.

Mortgagee's powers of dealing separately with surface and minerals.

(*n*) For the statutory powers of trustees for sale (L. P. Act, 1925, s. 28), and see as to mines and minerals: S. L. Act, 1925, s. 50. In view of the reservation this conveyance should be executed in duplicate.

(*o*) As to mortgagees' powers to deal separately with surface and minerals: L. P. Act, 1925, s. 101 (2) (ii).

As to mortgages made before 1911, see *Stamford, &c., Banking Co.* v. *Keeble* [1913], 2 Ch. 96; 82 L. J. Ch. 388.

aforesaid and subject thereto as to all the premises (*p*) except the said mines and minerals discharged from the trusts affecting the proceeds of sale.

IN WITNESS, &c.

No. VI.

CONVEYANCE *by a* TRUST CORPORATION *acting as* TRUSTEES *for sale under a* TRUST *created under L. P. Act*, 1925, *s.* 2 (2), *for overreaching an* EQUITABLE *interest created for money's worth.*(*q*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN the —— Bank Limited, whose registered office is at —— (hereinafter called the Vendors), of the one part, and R. P., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Seisin subject to a reversionary charge.

(1) At the date of the Conveyance on trust for sale hereinafter recited A. B., of, &c. (hereinafter called the Grantor), was seised of the property hereinafter described (with other property) for an estate in fee simple in possession subject to a principal sum of £—— charged thereon by a Deed of Grant dated, &c., and made between the Grantor of the one part and the —— Insurance Company (hereinafter called the Company) of the other part, whereby in consideration of a sum of £—— the Grantor charged the said property with the payment on his death to the Company of the said principal sum, with interest thereon from his death as therein mentioned:

Conveyance on trust for sale for the purpose of overreaching an equitable interest.

(2) By a Conveyance, dated, &c., and made between the Grantor of the one part and the Vendors of the other part, the Grantor conveyed the said property to the Vendors in fee simple Upon trust to sell the same and stand possessed of the net proceeds of sale and of the rents and profits until sale on such

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Reservations.

(*p*) The rights of working the minerals are created *de novo* and take effect in derogation of the rights of the surface owner and see L. P. Act, 1925, s. 65.

What equitable interests cannot be overreached by a trust for sale *ad hoc*.

"Trust corporation."

(*q*) The equitable interest must not come within S. L. Act, 1925, s. 1 (1) (v), for in that case title must be made under s. 20 (1) (ix) of that Act. An alternative method to a trust for sale *ad hoc* is a settlement *ad hoc* under *ib.*, s. 21. It is assumed that the security is not sufficient to enable the owner of the reversionary sum to release the land intended to be sold. The purchaser is entitled under L. P. Act, 1925, s. 42, to require the charge to be overreached unless he has bought subject thereto. As to the equitable interests which cannot be overreached: *ib.*, s. 2 (3). For the meaning of "trust corporation": *ib.*, s. 205 (1) (xxviii); it will generally be cheaper to appoint a trust corporation than to have two or more individuals as trustees approved by the court: *ib.*, s. 2 (2).

trusts in the first place as might be requisite for discharging the said reversionary sum and the interest thereon as and when the same should become payable, and subject thereto In trust for the Grantor absolutely:(*r*)

Agreement for sale.

(3) The Vendors as such trustees as aforesaid have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

NOW THIS DEED WITNESSETH as follows:—(*The rest of the Deed will follow Precedent No. I of this Group. It will not be necessary to join the Grantor.*)

IN WITNESS, &c.(*s*)

GROUP G.—CONVEYANCES ON SALES BY PERSONAL REPRESENTATIVES.(*a*)

No. I.

CONVEYANCE *of* FREEHOLDS *and* ENFRANCHISED LAND *by the* PERSONAL REPRESENTATIVES *of a person who died* AFTER 1925. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives*) (hereinafter called the

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Registration of a land charge.

(*r*) Even if a land charge were registered under L. C. Act, 1925, s. 10, Class C. (iii) (general equitable charge), to protect the reversionary sum, still after the trust for sale is created it can be overreached: L. P. Act, 1925, s. 2 (3) (v) (*b*).

Conveyances under implied trusts for sale.

(*s*) For other Precedents of conveyances under implied trusts for sale, see Group D, *supra*. No. 1 (by husband and wife formerly entitled as tenants by entireties); No. 2 (by persons formerly co-parceners); No. 3 (by partners formerly entitled as tenants in common); No. 4 (by estate owners where an infant was jointly entitled); No. 5 (where land was held in trust for tenants in common); No. 6 (by former S. L. Act trustees where the settled land has on 1st January, 1926, become vested in tenants in common); No. 7 (by the Public Trustee where land was held in undivided shares); No. 8 (by former S. L. Act trustees who have acquired the land after 1st January, 1926); No. 9 (where after 1925 land has been expressed to be conveyed in undivided shares); No. 10 (where after 1925 land has been devised or appointed to tenants in common). See also the next Group of Conveyances by Personal Representatives.

Trustee for sale being a lunatic or defective.

If a trustee for sale is a lunatic or defective a new trustee must be appointed in his place before the trustees can sell or exercise their powers (L. P. Act, 1925, s. 22 (2)); if he has some beneficial interest in the property, new trustees cannot be appointed by the continuing trustees without an order in lunacy: T. Act, 1925, s. 36 (9).

Registered land.

(*a*) In the case of registered land, either the personal representatives or the deceased owner will appear on the register as proprietors. In either case, the conveyance will be by a transfer in the ordinary form, without recitals,

Vendors (*b*)), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

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by the personal representatives. None of the Precedents in this group will apply: see L. R. R., rr. 168 to 170.

(*b*) Under L. T. Act, 1897, Part I (repealed as to deaths after 1925: L. P. (Amendment) Act, 1924, 1st Sched.); the freeholds of a person dying after 1897 devolved on his personal representatives in the same way as leaseholds devolved before that Act.

L. T. Act, 1897, Part I Law before 1926.

As executors derived their title to the freeholds under the Will and not from probate, all who did not renounce probate and disclaim the trusts had to join in the conveyance (*Re Pawley* [1900], 1 Ch. 58; 69 L. J. Ch. 6); one of several executors could not, as in the case of chattels real, make a title to real estate without an order of the court (s. 2); but after 1911 the proving executor could make title without an order of the court: Conv. Act, 1911, s. 12.

Formerly all executors who did not renounce and disclaim had to join.

Where special executors of foreign property are appointed they are not necessary parties on a sale of real estate in England by the general executors: *Re Cohen* [1902], 1 Ch. 187; 71 L. J. Ch. 164.

Exception to the rule where foreign and general executors.

The title of an administrator related back to the death of the intestate: *In b. Pryse* [1904], P. 301; 73 L. J. P. 84.

Administrator's title.

A sale in due course of administration was not invalidated by the finding of a will after the sale: *Hewson* v. *Shelley* [1914], 2 Ch. 13; 83 L. J. Ch. 607.

How affected by will found after appointment.

An administrator had power to sell leaseholds for the purposes of distribution among the next of kin: *Re Norwood & Blake* [1917], 1 Ir. R. 472.

Sale for purposes of distribution.

The Act did not alter the practice of the court to refuse to grant probate to a residuary legatee where no executors are appointed. Letters of administration with the will annexed had to be taken out as before: *In b. Pryse* [1904], P. 301; 73 L. J. P. 84.

Where no executors appointed, no variation of former practice.

Generally, as to what estates passed to personal representatives before 1925, see Wolst. Conv. Acts, 9th ed., 183, *et seq.* Equitable estates were within the meaning of the Act: *Phillips* v. *Probyn* [1899], 1 Ch. 811, 818; 68 L. J. Ch. 401.

What estates passed to the personal representatives.

By sub-s. 4 of s. 1 copyholds or customary freeholds in any case in which an admission or any act by the lord of the manor was necessary to perfect the title of a purchaser from the customary tenant, were not affected by the Act, but this sub-section did not exclude an equitable interest in copyholds: *Re Somerville and Turner* [1903], 2 Ch. 583; 72 L. J. Ch. 727.

Copyholds.

A sale by personal representatives under the Act of 1897, at any rate after probate, overreached succession duties, but a purchaser had to insist on obtaining a certificate under Fin. Act, 1894, s. 11, as regards estate duty.

Death duties.

Part I of the L. T. Act, 1897, is now superseded by Ad. of E. Act, 1925, in regard to deaths occurring after 1925.

Law after 1925.

By ss. 1 and 3 the real estate (including leaseholds and trust and mortgage estates) devolves on the personal representatives, who, in the case of settled land are the S. L. Act trustees (ss. 22-24). On an intestacy administration will be granted to the S. L. Act trustees limited to the settled land: Jud. Act, 1925, s. 162 (replacing s. 10). No question can arise as to copyholds, for they are all enfranchised. If probate or administration is not granted to S. L. Act trustees in regard to land settled before the death, this can be subsequently rectified: Ad. of E. Act, 1925, s. 23.

Devolution on death.

The personal representatives under s. 2 are in the same position as personal representatives before 1926 in regard to chattels real, but (save in the case of special representatives for settled land) all the proving executors and all the administrators must join in a conveyance of "real estate" including leaseholds.

Powers of personal representatives.

Recital of seisin, Will and probate, *or* intestacy.

(1) X. Y., being at his death (*continue Form No.* 18, *Sec. I, p.* 461, *where variations for the case of intestacy will be found*):

Agreement for sale.

(2) The Vendors (who have not made any previous conveyance or assent as respects the legal estates hereinafter conveyed), as the personal representatives of the said X. Y., deceased, have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession as to the freehold property first hereinafter described free from incumbrances and as to the enfranchised land secondly hereinafter described subject to the manorial incidents and rights reserved to the lord of the said manor by the Law of Property Act, 1922, but otherwise free from incumbrances at the price of £——:

Withdrawal of renunciation.

If an executor is allowed to withdraw a renunciation this will not affect the previous acts of the other personal representatives: s. 6.

Proving executors.

The proving executors have the powers (s. 8); this applies whether the testator died before or after 1926.

Number of personal representatives.

Probate or letters of administration will not be granted to more than four persons: Jud. Act, 1925, s. 160 (replacing s. 12). During a minority or the subsistence of a life interest they will either be granted to a trust corporation or to not less than two individuals: *ib.* In this case power is given to the court to appoint additional personal representatives: *ib.*

Separate representation.

Representation may be granted separately in regard to the "real" and personal estate, and in respect of a trust estate: Jud. Act, 1925, s. 156 (replacing s. 13). Provision is made for representation to be granted direct to a trust corporation: Jud. Act, 1925, s. 161 (replacing s. 14).

Trust corporations.

Infant.

No grant will be made to an infant till he attains full age: Jud. Act, 1925, s. 165 (replacing s. 20).

Persons protected.

Persons making payments, &c., to *de facto* personal representatives are protected: s. 27.

Endorsement of notice on probate, &c., statements by personal representatives.

A person who takes a legal estate under an assent or conveyance has a right to require notice thereof to be endorsed on the probate or letters of administration: s. 36 (5). This should always be done. A written statement by the personal representative that he has not made a previous assent or conveyance of a legal estate is (without prejudice to the rights of a previous purchaser from the personal representatives) sufficient evidence thereof in favour of a purchaser: *ib.*, sub-s. 6; unless notice of a previous conveyance or assent has been endorsed.

Notice of termination of administration.

If a purchaser of a legal estate has notice that the debts, funeral, administration expenses, duties and legacies have been discharged, this does not invalidate the conveyance (*ib.*, sub-s. 8); for the personal representatives may be acting during a minority or the subsistence of a life interest or for purposes of distribution: s. 39.

Case where date of testator's or intestate's death is immaterial.

The protection given by s. 36 to a purchaser only extends to a purchaser for money's worth (sub-s. 11), but the section applies to conveyances and assents made after 1925, whether the testator or intestate died before or after 1st January, 1926.

Sale under charge for debts, &c.

The powers given to the court by s. 38 (2) take the place of the provisions of the L. P. (Amend.) Act, 1859, ss. 14—18 (repealed as to deaths after 1925) relating to sales by executors or devisees in trust under a charge for debts created before 1898; for s. 38 applies whenever the testator or intestate died.

NOW in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as such personal representatives as aforesaid (the receipt of which sum the Vendors hereby acknowledge) THIS DEED WITNESSETH as follows :— Conveyance.

1. THE Vendors, As Personal Representatives of the said X. Y., deceased, hereby convey unto the Purchaser

FIRST ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*); Parcels.

SECONDLY ALL, &c. (*enfranchised land*),

TO HOLD unto the Purchaser in fee simple but as to the property secondly hereinbefore described subject to the manorial incidents and rights reserved to the lord of the said manor as aforesaid. Habendum.

2. (*Add acknowledgment for production, Form No.* 4, *Sec. III, p.* 480.)

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.(*c*)

No. II.

CONVEYANCE *of* FREEHOLDS *to* PURCHASER, *where* VENDOR *is* DEVISEE *for his own* BENEFIT *subject to* DEBTS *and* LEGACIES *and also* EXECUTOR.(*d*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c.

Those sections of the Act of 1859 became obsolete soon after 1897. See also as to equitable charges : L. P. Act, 1925, ss. 90, 91, 195. Parties.

A purchaser may assume that an appropriation made in purported exercise of the powers conferred by s. 41 has been duly made after all requisite consents have been given : sub-s. 7. Appropriation.

Personal representatives are given wide powers of disposition by s. 39, these include those given to trustees for sale (L. P. Act, 1925, s. 28); it follows that they have all the statutory powers of a tenant for life. These powers are exercisable after 1925 whenever the testator or intestate died : *ib.* As to the powers of personal representatives in regard to settled land : S. L. Act, 1925, ss. 6—8, 26, 110 ; 2nd Sch., paras. 2, 3 (2). Powers of disposition ; date of testator's, &c., death, immaterial.

The purchaser will not be concerned with death duties if the death occurred after 1925, unless a land charge has been registered : L. P. Act, 1925, s. 17. Death duties.

(*c*) This conveyance must be produced to the steward of the manor for endorsement and the customary payments made within six months : L. P. Act, 1922, s. 129. Notice of it must also be endorsed on the probate or letters of administration : Ad. of E. Act, 1925, s. 36. Production notice.

(*d*) This Precedent may be used whether the testator died before or after 1st January, 1926. If the devisee and executor are different persons, the devisee cannot make title till the executor has in writing assented to the legal estate vesting in him under Ad. of E. Act, 1925, s. 36, for, as respects assents made after 1925, that section applies, whether the testator dies before or after 1st January, 1926. If such an assent has been made the Will does not come on the title ; there would be a mere recital of the seisin of the vendor. A sole personal representative may give receipts though the land is held in trust for sale : L. P. Act, 1925, s. 27 (2).

(hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part : WHEREAS :—

Recital of Will.

(1) G. H., being at his death seised in fee simple in possession free from incumbrances of the property hereinafter described duly made his Will, &c. (*Recite Will devising all his real and personal estate to the Vendor subject to the payment of debts and legacies, and appointing him sole executor*) :

(2) (*Death of testator and probate*) :

Agreement for sale.

(3) The Vendor as such executor as aforesaid and in exercise of the powers conferred on him by the Administration of Estates Act, 1925, has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances, at the price of £—— :

NOW THIS DEED WITNESSETH, &c. (*as Precedent I, Group A, p.* 484, *supra, the Vendor conveying as beneficial owner adding at the end of habendum*, discharged from the trusts and provisions of the recited Will).

IN WITNESS, &c.

No. III.

CONVEYANCE *of* FREEHOLDS *by* PERSONAL REPRESENTATIVES *to give effect to a* CONTRACT *for* SALE *entered into by a* DECEASED VENDOR.(*e*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives of deceased Vendor*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part : WHEREAS

Agreement for sale by deceased Vendor.

(1) X. Y., deceased, being at his death seised in fee simple in possession free from incumbrances of the property hereinafter described, shortly before his death agreed to sell the same for a like estate to the Purchaser at the price of £——, and thereupon the sum of £—— was paid by the Purchaser to the said X. Y. by way of deposit and in part payment of the said purchase-money, but no further part of the said purchase-money has been paid :

Death of testator, Will and probate.

(2) The said X. Y. died on the —— day of ——, having by his Will dated the —— day of —— appointed the Vendors to

Death of testator before contract completed.

(*e*) If the deceased vendor died after 1897 and before 1926, title can be made under L. T. Act, 1897, Pt. I ; if he died after 1925, title will be made under Ad. of E. Act, 1925.

be his executors, who on the —— day of —— duly proved the same at the —— Probate Registry [*or* died intestate on the —— day of —— and Letters or Administration to his estate and effects were on the —— day of —— granted out of the —— Probate Registry to the Vendors]: [Variation where intestacy.]

(3) The Vendors, as the personal representatives of the said X. Y., have agreed to give effect to the said agreement upon payment to them by the Purchaser of the balance of the said purchase-money: Agreement to give effect to contract.

NOW for the purpose of giving effect to the said agreement and in consideration of the sum of £—— paid by way of deposit as aforesaid and of the sum of £—— now paid by the Purchaser to the Vendors as such personal representatives as aforesaid (the payment and receipt in manner aforesaid of which said several sums of £—— and £——, making together the said purchase-money of £——, the Vendors hereby acknowledge) THIS DEED WITNESSETH as follows:— Conveyance by Personal Representatives.

1. THE Vendors, As Personal Representatives of the said X. Y., deceased, hereby convey unto the Purchaser,

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*)

TO HOLD unto the Purchaser in fee simple. Habendum.

2. (*Add acknowledgment for production of documents, Form No.* 4 *Sec. III, p.* 480.)

[3. *Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

No. IV.

CONVEYANCE *of* FREEHOLDS *to give effect to a* CONTRACT *for* SALE *where the* PURCHASER *has* DIED BEFORE *completion.*(*f*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., (hereinafter called the Vendor), of the one part, and C. D., of, &c., and E. F., of, &c. (*personal representatives of Purchaser*) Parties.

(*f*) This Precedent would properly come under another group, but has been placed here for comparison with the last. As freeholds have since 1897 vested, like chattels real, in the personal representatives, the legal estate ought to be conveyed to them. It will be their duty to deal with the property as part of the testator's assets, but as the legal estate did not "devolve upon the personal representative," it seems that an assent under Ad. of E. Act, 1925, s. 36, will not be an available form of assurance when they come to deal with the land. Assent when inapplicable.

(hereinafter called the Purchasers), of the other part: WHEREAS:—(*Recite seisin of Vendor, and agreement by him to sell to X. Y., and payment of deposit; also the death of X. Y., probate by Purchasers or grant of administration to them, compare last Precedent*):

Agreement to carry contract into effect.

(4) The Purchasers, as the personal representatives of the said X. Y., have requested the Vendor to give effect to the said agreement, and he has agreed so to do on payment to him of the balance of the said purchase-money:

Conveyance to personal representatives.

NOW for giving effect to the said agreement and in consideration of the sum of £—— paid by way of deposit as aforesaid and of the sum of £—— now paid by the Purchasers out of the estate of the said X. Y. to the Vendor (the receipt of which said sums of £—— and £——, making together the said purchase-money of £——, the Vendor hereby acknowledges) THIS DEED WITNESSETH as follows:—

1. THE Vendor, As Beneficial Owner, hereby conveys unto the Purchasers,

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum.

TO HOLD unto the Purchasers in fee simple, as part of the real estate of the said X. Y., deceased, and to be dealt with by them in like manner as if the purchase of the said property had been completed in the lifetime of the said X. Y.

2. (*Acknowledgment as to documents, Form No.* 4, *Sec. III, p.* 480.)

[3. *Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

No. V.

ASSIGNMENT *of* LEASEHOLDS *by* PERSONAL REPRESENTATIVES.(*g*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives*) (hereinafter called the

All the proving executors must join.

(*g*) Title can no longer be made by one of two or more executors, but all the executors must join, for leaseholds after 1925 pass to them under Ad. of E. Act, 1925, ss. 1 and 3, as "real estate," hence under s. 1 (2) all the proving executors must be parties; the powers are exercisable by them whenever the testator died: *ib.*, s. 8. It was never competent for one of two or more administrators to make title.

Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

(1) By a Lease (*Form No.* 28, *Sec. I, p.* 468, *supra*): Lease.

(2) The said X. Y. died (*Form No.* 32, *Sec. I, p.* 470), [*or if X. Y. died intestate*, intestate on the —— day of ——, and Letters of Administration to his personal estate were on the —— day of —— granted out of the —— Probate Registry to the Vendors]: Death of testator or intestate.

(3) The Vendors (who have not made any assent or conveyance of the premises) as the personal representatives of the said X. Y., have agreed to sell to the Purchaser free from incumbrances the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £——: Agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as personal representatives of the said X. Y. (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Personal Representatives of the said X. Y., deceased, hereby assign unto the Purchaser, Assignment by personal representatives.

ALL the premises comprised in and demised by the recited Lease,

TO HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, observed and performed. Habendum.

2. THE covenants implied under section seventy-seven (1) (C) of the Law of Property Act, 1925, are incorporated in these presents, and the covenant for indemnity shall apply for the protection of the estate and effects of the said X. Y., deceased. Implied covenant by Purchaser to pay rent, &c., with a variation.

3. (*Acknowledgment for production of documents, Form No.* 4, *Sec. III, p.* 480.) Documents.

[4. *Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.(*h*)

(*h*) If the land of an intestate becomes vested in his personal representatives on trust for sale under Ad. of E. Act, 1925, s. 33, this need not make any difference to the form of the conveyance or assignment, the foregoing Precedents will be applicable or can be made to apply. Implied trust for sale on an intestacy.

In all cases of conveyances for value the personal representatives have (Ad. of E. Act, 1925, s. 39 (1) (ii)) the same overreaching powers as trustees for sale under L. P. Act, 1925, s. 28 (1), and S. L. Act, 1925, s. 72, unless the latter section is held to be inapplicable. Overreaching powers.

GROUP H.—CONVEYANCES ON SALE BY MARRIED WOMEN.(a)

No. I.

CONVEYANCE *by a* HUSBAND *and* WIFE *married before the 1st January*, 1883, *of* FREEHOLDS *of the* WIFE ACQUIRED *by her* BEFORE *that* DATE.(b) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and E. B., his wife (hereinafter called the Vendors), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Marriage but no settlement.

(1) The said A. B. and E. B. (then E. H., spinster) were married on the —— day of ——, 18—, and no settlement or agreement for a settlement was made on their marriage or has been since made affecting the real estate of the said E. B.:

Will devising property to wife.

(2) G. H., being at his death seised in fee simple in possession free from incumbrances of the property hereinafter described,

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Registered land.

(a) A married woman registered as proprietor has the same powers as any other proprietor, no matter when she was married. Such limitations of her powers as may exist (if any) are expressed in the form of restrictions on the register which must be complied with, wherever found. The conveyance will be by transfer in the usual form without recitals and none of the Precedents in this group will apply.

(b) This Precedent is intended for use in cases to which the M. W. P. Act, 1882, does not apply, and where the married woman is not entitled for her separate use. The deed need not be acknowledged: L. P. Act, 1925, s. 167. It is not essential to enquire whether a settlement has been made, though desirable: *Lloyds Bankg. Co.* v. *Jones* (1885), 29 Ch. D. 221; 54 L. J. Ch. 931; *cf. Walker* v. *Linom* [1907], 2 Ch. 104, 119; 76 L. J. Ch. 500. If the property is settled land the wife, without her husband, will make title: S. L. Act, 1925, s. 25. For a conveyance by a husband and wife formerly tenants by entireties, see Group D, *supra*, Precedent No. 1.

Enquiry as to settlements.

Woman married and acquiring property before 1883.

When the husband and wife were married and the property was acquired before 1883, they were treated as "one person": Black. Com. 442; in regard to her freeholds they were both seised in her right: *Atham's Case* (1611), 8 Co. Rep. 148a, 149a, note (A); *Took* v. *Glascock* (1667), 1 Wm. Saunders, 250, 253 n (4). There is no joint tenancy, hence no trust for sale arises under L. P. Act, 1925, s. 36; though the husband had a freehold interest for the joint lives which he could dispose of by deed: *Robertson* v. *Norris* (1848), 11 Q. B. 916; and will still take effect as an equitable interest; this arose by operation of law, not under any instrument, hence there is no settlement within S. L. Act, 1925, s. 1; nor is there any succession, for both are seised; he is not a "tenant" for the life of another within *ib.*, s. 20 (1) (v) or (vi), hence there is no settled land or a person having the powers of a tenant for life. Consequently no vesting deed is required under S. L. Act, 1925, s. 13, and 2nd Sch., para. 1. His estate by the curtesy is abolished by Ad. of E. Act, 1925, s. 45, but on her death the land will devolve on her personal representative: *ib.*, s. 1; the widower will be granted administration to her estate: *ib.*, ss. 10 (replaced by Jud. Act, 1925, s. 162) and 40.

duly made his Will dated the —— day of —— and thereby devised all his real and personal estate to his daughter, the said E. B.:

(3) The said G. H. died on the —— day of ——, 18—, without having revoked or altered his said Will, which was on the —— day of ——, 18—, duly proved at the —— Probate Registry by the executors therein named :(*c*) Death and probate.

(4) The Vendors have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——: Agreement for sale.

NOW in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge) THIS DEED WITNESSETH as follows:— Conveyance by husband and wife.

1. THE said E. B., As Beneficial Owner,(*d*) with the concurrence of her husband, the said A. B., hereby conveys and disposes of and the said A. B., As Beneficial Owner,(*d*) hereby conveys and confirms unto the Purchaser

ALL THOSE, &c. (*e*) (*see Forms in Sec. II, p.* 471, *et seq.*), Parcels.

TO HOLD unto the Purchaser in fee simple. Habendum.

2. (*Add acknowledgment for production of documents and undertaking for safe custody, Form No.* 4, *Sec. III, p.* 480.)

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

(*c*) If the property was acquired by the wife before the marriage, the following recital will be substituted for the first three in the text:—

At the date of her marriage with the said A. B., which took place on the —— day of ——, 18—, the said E. B. (then E. H., spinster) was seised of the property hereinafter described in fee simple in possession free from incumbrances, and no settlement or agreement for a settlement was then made or has been since made affecting the said property.

(*d*) These words imply a covenant for title on the part of the wife that notwithstanding anything by her, &c., she has, &c., and binds her present and future separate estate which she is not restrained from anticipating, whether she has any at the date of the covenant or not (M. W. P. Act, 1893, s. 1), and also a covenant for title by the husband that notwithstanding anything by him, &c., he has, &c., and also a covenant by him in the same terms as the implied covenant of the wife, namely, "That notwithstanding anything by her, &c., she has," &c.: L. P. Act, 1925, s. 76 (3). Covenants for title by husband and wife as beneficial owners.

(*e*) This Precedent may be readily adapted to a conveyance of enfranchised land. In the case of leaseholds the term vests in the husband. Variations in case of enfranchised land and leaseholds.

No. II.

CONVEYANCE *of* FREEHOLDS *by a* MARRIED WOMAN *married* AFTER 1882.(*f*) VARIATIONS *where she married* BEFORE 1883 *and the property* VESTED *in her* AFTER 1882.(*g*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is (*h*) made, &c., BETWEEN E. B. (hereinafter called the Vendor), the wife of A. B., of, &c., of the one part, and C D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Marriage of Vendor.

(1) The Vendor (then E. H., spinster) intermarried with the said A. B. on the —— day of ——, 189 [18— (*i*)], and no settlement or agreement for a settlement was then or has since been made affecting the property hereinafter described:

Variation where property acquired after marriage.

Seisin of Vendor.

(2) The Vendor was at the date of her said marriage and still is seised in fee simple in possession free from incumbrances of the property hereinafter described:

[Variation; devolution of property to Vendor under an intestacy after marriage.]

[(2) X. Y., deceased, being at his death seised in fee simple in possession free from incumbrances of the property hereinafter described, died on the —— day of ——, intestate and leaving the Vendor his heiress-at-law (*j*)]:

Agreement to sell.

(3) The Vendor has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession, free from incumbrances at the price of £——:

Conveyance by married woman.

NOW in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor

(*f*) See M. W. P. Act, 1882, s. 2.

(*g*) See M. W. P. Act, 1882, s. 5; *Reid* v. *R.* (1886), 31 Ch. D. 402; 55 L. J. Ch. 294; *Re Bacon* [1907], 1 Ch. 475; 76 L. J. Ch. 213.

(*h*) For a form of conveyance by a married woman tenant for life, see Prec. IX, Group E, p. 589, *supra*.

(*i*) The words in square brackets throughout this Precedent will only be required where the vendor was married before 1883 and the property vested in her after 1882. Except to some extent on behalf of an infant, a husband can no longer make a valid settlement of his wife's personalty or reversionary interests: M. W. P. Act, 1907, s. 2.

Heirship.

Abolition of heirship.

(*j*) If X. Y. died after 1897, and before 1926, his freeholds would vest, under the L. T. Act, 1897, Pt. I, in his personal representative, and the grant of letters of administration and conveyance by him must be recited. Save under an intestacy of a lunatic living and of full age on 1st January, 1926 (Ad. of E. Act, 1925, s. 51 (2)), there can be no devolution to an "heir" under an intestacy after 1925. The real and personal estate of the intestate vests in the personal representatives on trust for sale (*ib.*, s. 33), and the proceeds are held for the new statutory next of kin under s. 46. There could, however, be an appropriation under s. 41, and effect to this would be given by an assent under s. 36, for an assent can be given in favour of a person interested under

(the receipt of which sum the Vendor hereby acknowledges) THIS DEED WITNESSETH as follows:—

1. THE Vendor, As Beneficial Owner,(*k*) hereby conveys unto the Purchaser,

ALL THAT, &c. (*l*) Parcels.

TO HOLD unto the Purchaser in fee simple. Habendum.

2. (*Add acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480.)

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c. (*m*)

No. III.

CONVEYANCE *of* FREEHOLDS *by a* MARRIED WOMAN *to her* HUSBAND, *the* PROPERTY *having been acquired and the* MARRIAGE *having taken place* BEFORE 1883.(*n*) VARIATIONS *where the conveyance is* VOLUNTARY. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN C. B. (herein- Parties.

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an intestacy as well as in favour of a devisee; *ib.*, s. 36. But in these cases the documents material to a purchaser are the probate or letters of administration and the assent. These remarks do not apply to "an heir of the body" under an entail, here an equitable interest which does not concern a purchaser can still pass: L. P. Act, 1925, s. 130.

(*k*) Under this Precedent the vendor conveying as beneficial owner will be liable to the statutory covenants for title, in respect of her separate property. The M. W. P. Act, 1893, s. 1, provides that every contract by a married woman after the 5th December, 1893, shall be deemed to be entered into by her with respect to and so as to bind her separate property, whether she is or is not possessed of any separate property at the date of such contract (see *Paquin* v. *Beauclerk* [1906], A. C. 148; 75 L. J., K. B. 395), and shall bind all separate property which she may at that time or thereafter be possessed of, and shall also be enforceable by process of law against all property which she may thereafter whilst discovert be possessed of. The above enactment does not apply to separate property which the wife is restrained from anticipating; but see *ib.*, s. 2, as to the removal of the restraint by the court in proceedings instituted by or on behalf of a married women; and L. P. Act, 1925, s. 169, which enables the court to bind her interest where satisfied that the transaction is for her benefit. Contract by married woman binds her separate property, present and future.

(*l*) The above Precedent may be readily adapted to a conveyance of enfranchised land and an assignment of leaseholds. Variations for enfranchised land and leaseholds.

(*m*) In former editions a precedent has been given of conveyance by a married woman with her trustee to support a "separate use"; but, as the land belongs to her as her separate property, it is conceived that any legal estate so outstanding would be got in by L. P. Act, 1925, 1st Sch., Pt. II. It has not been necessary after 1882 to have a trustee for this purpose: M. W. P. Act, 1882, s. 1 (1). If she was married before 1883, her title to the legal estate would, it seems, accrue to her after 1882, for the purposes of s. 5 of that Act. In any case, there cannot be many such estates (if any) outstanding. Trustee to support separate use.

(*n*) By the L. P. Act, 1925, s. 72 (2), a wife can convey freeholds directly to her husband, and can grant him a lease derived out of freeholds or assign

after called the Grantor), the wife of A. B., of, &c., of the one part, and the said A. B. (hereinafter called the Grantee), of the other part: WHEREAS:—

Seisin.

(1) The Grantee married the Grantor on the —— day of ——, 18—, and the Grantor was at the date of her marriage and still is seised in fee simple in possession free from incumbrances of the property hereinafter described:

Agreement to convey.

(2) The Grantor has agreed to sell the said property to the Grantee at the price of £—— [*or* is desirous of giving the said property to the Grantee]:

Wife conveys to husband.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Grantee to the Grantor as her separate property (*the receipt, &c.*) [*or* in consideration of her love and affection for her said husband], the Grantor, As Beneficial Owner (*o*) [*or* As Settlor], with the concurrence of the Grantee (testified by his execution hereof), hereby conveys and disposes of unto the Grantee,

Parcels.

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum.

TO HOLD unto the Grantee in fee simple [for his own use beneficially (*p*)].

[2. *Add Acknowledgment as to documents, Form No.* 4, *Sec. III, p.* 480, *if required.*]

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chattels to him, see *Ramsay* v. *Margrett* [1894], 2 Q. B. 18; 63 L. J. Q. B. 513; *Re Marlborough* [1894], 2 Ch. 133; 63 L. J. Ch. 471. This deed need not be acknowledged: L. P. Act, 1925, s. 167.

(*o*) As full covenants for title are only implied by s. 76 of the L. P. Act, 1925, where there is consideration, if it is intended in a voluntary conveyance that the grantor shall give such covenants the following words should be added:—"PROVIDED ALWAYS, that the statutory covenants which would have been implied in these presents if made for valuable consideration in money by reason of the Grantor being expressed to convey As Beneficial Owner shall be deemed to be incorporated in these presents." This proviso should not be used without fully explaining its meaning to the grantor. As to Voluntary Conveyances, see Dissertation in Vol. III on Voluntary Settlements; also Fin. (1909-10) Act, 1910, ss. 73, 74; as to the stamp, Highmore, 4th ed., pp. 154, *et seq.*, 183, *et seq.*

Variation where full covenants for title given in a voluntary conveyance.

(*p*) In a voluntary conveyance these words in brackets are not essential; there will be no resulting trust merely because they are omitted: L. P. Act, 1925, s. 60 (3).

3. (*Add Certificate if the consideration does not exceed* £500, *Form No.* 8, *Sec. III, p.* 483. *If the conveyance is voluntary and the value does not exceed* £500, *the Certificate must refer to the value.*)

IN WITNESS, &c.

GROUP J.—CONVEYANCES ON SALES ON BEHALF OF LUNATICS, DEFECTIVES, BANKRUPTS, AND CONVICTS.(*a*)

No. I.

CONVEYANCE *of* FREEHOLDS *of a* LUNATIC *by the* COMMITTEE *of his* ESTATE.(*b*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B.,(*c*) of, &c., a person of unsound mind so found by inquisition (hereinafter called the Vendor), acting by C. D., of, &c. (hereinafter called the Committee), the Committee of his estate, of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) By an inquisition taken before ——, Esqre., the Master in Lunacy, on the —— day of ——, under a Commission in Lunacy duly issued for that purpose, the Vendor was found to be a person of unsound mind: Inquisition under commission in lunacy.

(2) By an Order in Lunacy made on the —— day of ——, In the matter of A. B., a person of unsound mind, the Committee was appointed to be the committee of the person and estate of the Vendor: Appointment of Committee.

(3) The Vendor was at the date of the said inquisition and still is seised in fee simple free from incumbrances of the property hereinafter described: Seisin of lunatic.

(4) The Committee as such committee as aforesaid has agreed on behalf of the Vendor to sell to the Purchaser the said property and the fee simple thereof in possession free from incumbrances at the price of £——, subject to the approbation of the Judge or Master in Lunacy: Agreement for sale.

(5) By a further Order in Lunacy (hereinafter called the Order of 19—) made on the —— day of ——, 19—, in the Order in Lunacy confirming contract.

(*a*) As to registered land, see the general note at end of this Group. Registered land

(*b*) See Dissertation, p. 79, *et seq.*; also L. P. Act, 1925, s. 22 (1), under which the committee or receiver will when conveying a legal estate always execute in the name of the lunatic or defective.

(*c*) See Prec. XI, Group E., p. 593, *supra*, for a form of conveyance where the lunatic or defective is a tenant for life; see also S. L. Act, 1925, s. 28.

matter aforesaid it was ordered that the said conditional agreement should be carried into effect and that the said purchase-money of £—— should be paid to the Committee as such committee as aforesaid,(*d*) and that it should be referred to the Master in Lunacy to settle and approve of a proper conveyance of the said property to the Purchaser:

Approval of conveyance by Master.

(6) The Master in Lunacy has settled and approved of these presents as a proper conveyance, pursuant to the Order of 19— as testified by the seal of the Master affixed in the margin hereof:

Conveyance by Committee in name of lunatic.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and the Order of 19— and in consideration of the sum of £—— now paid by the Purchaser to the Committee as such committee as aforesaid (the receipt of which sum the Committee hereby acknowledges), the Vendor, As Beneficial Owner,(*e*) acting by the Committee as such committee as aforesaid, hereby conveys unto the Purchaser,

Parcels.

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple.

2. (*Add acknowledgment for production of documents, Form No.* 4, *Sec. III, p.* 480.)

Form of signature and attestation.

[3. *Add Form No.* 8, *Sect. III, p.* 481, *if required.*]

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written. (*The deed should be executed by the Committee in the name of the lunatic, thus,* "A. B., by C. D., his Committee," *and the attestation clause should be* Signed, Sealed, and delivered by the within-named A. B. by C. D., his Committee, in the presence of, &c. (*f*))

Sale by Committee of a lunatic.

(*d*) See Rules in Lunacy, 1892 (W. N., 1892, Rules and Orders, p. 7), r. 124; and as to vesting orders, O. 55, r. 13B; 56 Sol. J. 269. The purchase-money must be paid either into court or as the order directs. The court will authorise a sale in consideration of a perpetual rentcharge: *Re Ware* [1892], 1 Ch. 344; 61 L. J. Ch. 279; but not in consideration of shares in a company: *Re A. B.* [1899], W. N. 233. As to the sale before 1926 of the undivided share of a lunatic to his co-owners, see *Re Weld* (1885), 28 Ch. D. 514; *Re Gaitskell* (1889), 40 Ch. D. 416; 58 L. J. Ch. 262. The same principle may be applied after 1925 to a sale of a share in the net proceeds, for the entirety of the land will be held on trust for sale.

Covenants for title.

(*e*) S. 124 of the Lunacy Act, 1890, enables the committee to enter into usual and proper covenants on his behalf on a sale including covenants for title: *Re Ray* [1896], 1 Ch. 468; 65 L. J. Ch. 316. If the committee conveyed simply as committee, only the covenant against incumbrances would be implied: see L. P. Act, 1925, s. 76 (*f*).

(*f*) See *Lawrie* v. *Lees* (1881), 7 A. C. 19 51 L. J. Ch. 209, as to what is a sufficient execution by a committee. A person found lunatic by inquisition

No. II.

CONVEYANCE *of* FREEHOLDS *of a* LUNATIC *by the* COMMITTEE *of his* ESTATE, *where the* PURCHASE *is made under* COMPULSORY POWERS.(*g*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., a person of unsound mind so found by inquisition (hereinafter called the Vendor), acting by C. D., of, &c. (hereinafter called the Committee), the Committee of his estate, of the one part, and the —— Council (hereinafter called the Council), of the other part: WHEREAS:— Parties.

(1)-(3) (*Recite inquisition, appointment of Committee and seisin of lunatic as in last Precedent.*) Recitals.

(4) The Council require and are by the —— Act, 19— (*the special Act*), and the Acts incorporated therewith (including the Land Clauses Consolidation Act, 1845), authorised to acquire the property hereinafter described for the purposes of the said Act of 19— (*the special Act*): Power for Council to acquire the land.

(5) and (6) (*As in* (4) *and* (5) *of last Precedent, saying* "Council" *for* "Purchaser," *and omitting in the recital of the Order the direction as to payment of the purchase-money, but if so ordered stating the direction that the purchase-money should be paid to the credit of the lunacy matter*(*h*)): Agreement for sale. Order in Lunacy confirming sale. Approval of conveyance by Master in Lunacy.

(7) On the —— day of ——, 19—, the Council paid the said purchase-money of £—— into court to the credit of ——, [*or* to the credit of —— in the matter aforesaid], as the Committee hereby acknowledges(*i*): Payment into Court.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and of the said Order of 19— and in consideration of the sum of £—— so paid as Conveyance by Committee in the name of the lunatic.

cannot execute a valid deed during a lucid interval so long as the inquisition continues in force: *Re Walker* [1905], 1 Ch. 160; 74 L. J. Ch. 86; and see as to lunatics not so found, Lunacy Act, 1908, s. 1.

(*g*) See L. Clauses Act, 1845, s. 7; after 1925 the conveyance will be made in the name of the lunatic: L.P. Act, 1925, s. 22 (1), notwithstanding *Re Tugwell* (1884), 27 Ch. D. 309; 53 L. J. Ch. 1006.

(*h*) The leave of the Judge or Master in Lunacy should be obtained: *Re Taylor* (1849), 1 Mac. & G. 210. Instead of paying the purchase-money into court under L. Clauses Act, 1845, s. 69, it may, under an order in lunacy, be paid to the credit of the lunacy matter: *Re Milnes* (1875), 1 Ch. D. 28; *Re Buckingham* (1876), 2 Ch. D. 690. The compensation will not be paid into court if title can otherwise be made: L. P. Act, 1925, s. 42 (7).

(*i*) The usual certificate of payment into court should be obtained by the council if the money is paid into court.

aforesaid, the Vendor, As Beneficial Owner, acting by the Committee as such Committee as aforesaid, hereby conveys unto the Council,

Parcels. ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum. TO HOLD unto the Council in fee simple.

[2 and 3. *Add Forms Nos.* 4 *and* 8, *pp.* 480, 483, *if required.*]

IN WITNESS, &c. (*For attestation see last Precedent.*)

No. III.

CONVEYANCE *on sale of* FREEHOLDS *by a* RECEIVER *appointed under the* LUNACY ACT, 1890,(*j*) *to exercise the powers of a* COMMITTEE *of the estate of a* DEFECTIVE. (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., a person of unsound mind, but not so found by inquisition [*or* a defective as defined by the Law of Property Act, 1925] (hereinafter called the Vendor), acting by C. D., of, &c. (hereinafter called the Receiver), the person appointed to exercise the powers of a committee of his estate, of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Vendor is lunatic not so found by inquisition, &c. (1) The Vendor is a person [lawfully detained as a lunatic but not so found by inquisition] [*or* unable to manage his affairs] [*or* is a defective] within the meaning of section one hundred and sixteen of the Lunacy Act, 1890 [as extended by section sixty-four of the Mental Deficiency Act, 1913]:

Appointment of receiver to exercise the powers of Committee. (2) By an Order in Lunacy made on the —— day of ——, In the matter of A. B., a person of unsound mind not so found by inquisition [*or* a defective], the Receiver was appointed to exercise the powers of a committee of the estate of the Vendor:

Seisin of lunatic or defective. (3) The Vendor was at the date of the said Order and still is seised in fee simple free from incumbrances of the property hereinafter described (*other recitals as in Precedent I of this Group, substituting* "the Receiver" *for* "*the Committee,*" *and omitting the words* "*as such committee, as aforesaid*"):

Other recitals.

(*j*) See ss. 116, 120, Lunacy Act, 1908, s. 1; also Mental Deficiency Act, 1913, s. 64. The jurisdiction in lunacy determines on the death of the defective or lunatic: *Re Hunt* [1906], 2 Ch. 295; 75 L. J. Ch. 801. For definition of "defective": L. P. Act, 1925, s. 205 (1) (xiii).

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the last mentioned Order and in consideration of the sum of £—— now paid by the Purchaser to the Receiver (*the receipt, &c.*) the Vendor, As Beneficial Owner, acting by the Receiver, hereby conveys unto the Purchaser, Conveyance by receiver.

All, &c. (*see Forms in Sec. II, p.* 471, *et seq.*), Parcels.

To hold unto the Purchaser in fee simple. Habendum.

[2 and 3. *Add Forms Nos.* 4 *and* 8, *pp.* 480, 483, *if required.*]

In witness, &c.

The deed should be executed by the Receiver in the name of the lunatic, thus, "A. B. by C. D., the person appointed to exercise the powers of a committee of his estate." *And the attestation clause should be* "Signed, sealed, and delivered by the above-named A. B. by C. D., the person appointed to exercise the powers of a committee of his estate" in the presence of, &c.

No. IV.

CONVEYANCE *of* Freeholds *by the* Trustee *of a* Bankrupt.(*a*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., Between X. Y., of, &c. (*trustee*) (hereinafter called the Vendor), of the one part, and Parties.

(*a*) The Bankruptcy Act, 1914, s. 19, provides that when a debtor is adjudged bankrupt, or the creditors have resolved that he be so adjudged, or where the creditors wish to appoint a trustee in place of one appointed by the Board of Trade, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of his property, or may resolve to leave the appointment to the committee of inspection. A person who has been previously removed from the office of trustee for misconduct or neglect of duty is disqualified from appointment as trustee in bankruptcy (s. 19 (1)); other grounds rendering a person unfit for this appointment are stated in s. 19 (2). On his appointment a trustee in bankruptcy must give security to the satisfaction of the Board of Trade, who will then, unless there is any further ground for objection, certify the appointment (s. 19 (2)); which takes effect from the date of the certificate: s. 19 (4). Bankruptcy Act, 1914. Appointment of a trustee.

If the creditors fail to appoint a trustee in bankruptcy the Board of Trade may do so, or the Official Receiver may summon a meeting of creditors for the purpose of making such an appointment: s. 19 (6) (8). Appointment of trustee by Board of Trade.

The creditors, qualified to vote may at their first or any subsequent meeting appoint from their number a committee of inspection, consisting of not more than five or less than three persons to superintend the administration of the bankrupt's property by the trustee: s. 20 (5). The persons so appointed must possess one or other of the qualifications mentioned in sub-s. 2 of s. 20. Appointment of a committee of inspection.

Section 38 declares that the property of the bankrupt divisible amongst the creditors shall comprise all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and the capacity to exercise and take Property divisible amongst creditors of bankrupt.

C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Seisin of bankrupt.

(1) At the date of his bankruptcy hereinafter mentioned A. B., of, &c., was seised in fee simple in possession free from incumbrances of the property hereinafter described:

Order of adjudication and certificate.

(2) By an Order (made pursuant to a petition in bankruptcy duly registered as a pending action) of the King's Bench

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proceedings for exercising such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of the bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and all goods being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner, provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section. In s. 167 property is widely defined and for the first time expressly includes property situated out of England. Power is given to the trustee to compel a bankrupt to convey to him property situated outside England according to the correct legal method of the country in which the property is situated. As to reputed ownership, see Wms. Bkcy., 13th ed., p. 266, *et seq.* Property held by the bankrupt on trust for any other person and certain effects to the value of £20 are excepted. The legal estate in settled land will not vest in the trustee: S. L. Act, 1925, s. 103.

Trust estates.

Power of appointment and release of power.

A trustee in bankruptcy cannot exercise any general power of the bankrupt by deed or will after his death: *Nichols to Nixey* (1885), 29 Ch. D. 1005; 55 L. J. Ch. 146. Nor can the trustee release a limited power of appointment by deed or will for the benefit of the bankrupt's estate: *Re Rose* [1904], 2 Ch. 348; [1905], 1 Ch. 94; 73 L. J. Ch. 726; 74 *ib.*, 22, where the C. A. expressed no opinion on the point.

Effect of exercise of testamentary power.

It seems that an exercise of a testamentary power does not operate for the benefit of the creditors of a bankrupt so as to give the trustee in bankruptcy the right to the appointed property, but such appointment may enure for the benefit of creditors whose debts were incurred after the date of the bankruptcy: *Jenney* v. *Andrews* (1822), 6 Madd. 264; *Re Guedalla* [1905], 2 Ch. 331; 75 L. J. Ch. 52; also *Re Benzon* [1914], 2 Ch. 68; 83 L. J. Ch. 658. See also as to powers vested in a bankrupt, Wace on Bkcy., 215, *et seq.*

Official receiver.

Until a trustee is appointed, the official receiver is the trustee for the purposes of the Act, and may therefore sell (*Turquand* v. *Board of Trade* (1886), 11 A. C. 286; 55 L. J. Q. B. 417); or disclaim onerous property: *Re* (*Cohen*) [1905], 2 K. B. 704; 74 L. J. K. B. 864. On the appointment of a trustee, the property forthwith vests in him: s. 53. It is also his duty to report to the Board of Trade when a vacancy has occurred in the trusteeship and the creditors have not taken steps to fill it within three weeks.

Trustee in bankruptcy.

The creditors may, if they think fit, appoint more persons than one to the office of trustee: s. 77. Any vacancy in the office of trustee may be filled up by the creditors in general meeting, and during any vacancy the official receiver is empowered to act as trustee: s. 78.

Powers of trustee as to sales, and as to bankrupt's estate tail.

Section 55 empowers the trustee to sell the property of the bankrupt by public auction or private contract, to exercise any powers the capacity to exercise which is vested in the trustee under the Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect its provisions; and to deal with any property to which the bankrupt is

Division (*b*) of the High Court of Justice [*or, as the case may be,* the County Court of ——], made on the —— day of —— (duly registered as a writ or order affecting land) the said A. B. was adjudged a bankrupt and the Vendor was upon the issue by the Board of Trade of a certificate dated the —— day of ——,(*c*) on or about the —— day of —— duly appointed to be the trustee of his estate and effects :

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beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same ; and declares that ss. 56 to 73 (both inclusive) of the Fines and Recoveries Act, 1833, shall extend to proceedings in bankruptcy under the Act.

As to things in action.

Section 48 (3) provides that when any part of the property of the bankrupt consists of property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer it to the same extent as the bankrupt might have exercised it if he had not become bankrupt ; and that (sub-s. 5) where any such property consists of things in action such things shall be deemed to have been duly assigned to the trustee.

Conveyances and contracts for value, before the date of receiving order, are valid where purchaser has had no notice of act of bankruptcy.

Subject to the provisions of ss. 42, 43 and 44, as to the avoidance of voluntary settlements, general assignments of book debts unless registered, and preferences in certain cases (in respect of which see Wms. Bkcy., 13th ed., pp. 298-308), any payment by a bankrupt to any of his creditors, and any payment or delivery to him, any conveyance or assignment by him for a valuable consideration, and any contract, dealing, or transaction by or with him for valuable consideration are declared to be valid, provided the payment, &c., take place before the date of the receiving order, and the person (other than the debtor) to, by or with whom the payment, &c., was made, executed or entered into, has not at the time of such payment, &c., notice of any available act of bankruptcy committed by the bankrupt before that time (s. 45) ; while s. 46 gives protection to a person who has paid money or delivered goods to a bankrupt before the issue of the receiving order and without notice of the presentation of a petition, provided the payment or delivery was made in the ordinary course of business.

As to property acquired by undischarged bankrupt.

Real and personal property and things in action acquired by an undischarged bankrupt after his bankruptcy can be received and dealt with by him so as to confer a good title on a purchaser for value in good faith until the trustee intervenes : s. 47. This is a statutory confirmation of the rule in *Cohen* v. *Mitchell* (1890), 25 Q. B. D. 262 ; 59 L. J. Q. B. 409 ; and it is conceived that the judicial decisions founded on that case remain good. In *Hosack* v. *Robins* [1918], 2 Ch. 339 ; 87 L. J. Ch. 545, it was decided that a charging order was not a transaction for value within this rule.

Once the trustee has intervened he cannot, by withdrawing, revest the property in the bankrupt : *Hill* v. *Settle* [1917], 1 Ch. 319 ; 86 L. J. Ch. 243.

Section 47 gives special protection to a banker who has dealt with an undischarged bankrupt without notice of the bankruptcy, but imposes on him the duty of at once informing the Board of Trade upon ascertaining that one of his customers is an undischarged bankrupt, and of withholding further payments, except under an order of the court, or the trustee in bankruptcy.

(*b*) The jurisdiction of the London Court of Bankruptcy has been transferred to the High Court of Justice, and bankruptcy business is, under the General Orders dated 1st January, 1884, assigned to the King's Bench Division until further order.

(*c*) See s. 19, Bkcy. Act, 1914 ; also *Re Mardon* [1896], 1 Q. B. 140 ; 65 L. J. Q. B. 111.

Agreement for sale.

(3) The Vendor, as such trustee as aforesaid, has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— :(*d*)

Conveyance by trustee.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor as such trustee as aforesaid (*the receipt, &c.*), the Vendor, As Trustee,(*e*) and in exercise of the power for this purpose conferred on him by the Bankruptcy Act, 1914,(*f*) hereby conveys unto the Purchaser,

Parcels.

All, &c. (*see Forms in Sec. II, p.* 471, *et seq.*).

Habendum.

To hold unto the Purchaser in fee simple.

Acknowledgment as to documents.

2 and 3. (*Add acknowledgment for production of documents, Form No.* 4, *Sec. III, p.* 480 ; *also Form No.* 8, *p.* 483, *if required.*)(*g*)

In witness, &c.

(*d*) This recital may be used whether the sale is by public auction or private contract.

(*e*) The trustee is only bound to give the covenants for title implied by his conveying as trustee : Wace, 277. Sometimes the bankrupt, who cannot be compelled to do so, joins and is expressed to give full covenants for title, but it would seem that, having regard to his financial position, his covenants are valueless.

Vesting in bankruptcy trustee.

(*f*) The statutory provisions for vesting a legal estate in the trustee in bankruptcy remain in force : L. P. Act, 1925, s. 7 (3) (*c*).

Pending action.

But a petition in bankruptcy filed after 1925, must be registered as a pending action (L. C. Act, 1925, s. 2 (1)), and in the case of a firm against the partners as well as the firm (sub-s. 4), no fee for registration will be charged against the registrar of the court (sub-s. 5), it must be re-registered every five years (sub-s. 8), unless the receiving order is registered under s. 6.

Protection of purchaser for money's worth.

An unregistered petition will not bind a purchaser for money's worth of a legal estate in good faith without notice of an available act of bankruptcy : s. 3 (1). As respects the conveyance or grant of a legal estate after 1925 the filing of a petition will not of itself give notice of an act of bankruptcy : sub-s. 2. The title of the trustee acquired after 1925 will be void as against a purchaser for money's worth of a legal estate without notice of an available act of bankruptcy.

Registration of receiving order.

If the purchaser claims under a conveyance made after the registration of the petition, unless a pending action or the receiving order is then registered : sub-s. 3. The same principles are applied to the registration of the receiving order as a writ or order affecting land : ss. 6 (1) (*c*), (3), (4) ; 7 (1) and (2). There is still a danger period between the filing of the petition and its registration as a pending action ; this cannot be helped. But every purchaser acquiring a title from a trustee in bankruptcy should satisfy himself that either the petition or the receiving order has been registered.

(*g*) The trustee must give the usual acknowledgment for production, but being a trustee he is probably not bound to give an undertaking for safe custody : Wace, 277.

No. V.

CONVEYANCE *of* FREEHOLDS *of a* BANKRUPT *by the* OFFICIAL RECEIVER *with the* CONCURRENCE *of* MORTGAGEES. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN J. K., of, &c., and M. N., of, &c. (hereinafter called the Mortgagees), of the 1st part, X. T., of, &c., one of the Official Receivers in Bankruptcy (*h*) (hereinafter called the Receiver), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS—

Mortgage by bankrupt.

(1) By a Mortgage, dated, &c., made between A. B. of the one part, and the Mortgagees of the other part, the said A. B. (being then seised of the property hereinafter described for an estate in fee simple in possession free from incumbrances) conveyed that property to the use of the Mortgagees in fee simple subject to redemption by the said A. B., on payment of the principal sum of £—— and interest thereon as therein mentioned:

Conversion into a long term mortgage.

(2) By virtue of the Law of Property Act, 1925, the said property became vested in the Mortgagees for a term of 3,000 years without impeachment of waste subject to cesser on payment of the said principal money and interest and subject to the said term the said property became vested in the said A. B. in fee simple:

Order of adjudication.

(3) By an Order (made pursuant to a petition in bankruptcy duly registered as a pending action) of the King's Bench Division of the High Court of Justice made on the —— day of —— the said A. B. was adjudged a bankrupt, the Receiver was thereby constituted receiver of his property and the said Order was duly registered as a writ or order affecting land:

Agreement for sale.

(4) The Receiver, as such receiver as aforesaid, has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Agreement by Mortgagees to concur.

(5) The principal sum (*continue as in Form No. 2, Sec. I, p. 452, supra*):

NOW in pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Mortgagees by the direction of the Receiver (the receipt of which sum the

(*h*) On the making of a receiving order an official receiver is constituted receiver of the debtor's property until the appointment of a trustee: Bkcy. Act, 1914, ss. 53, 74. See also notes to last Precedent.

Mortgagees hereby acknowledge) and of the sum of £—— paid by the Purchaser to the Receiver (the payment and receipt of which sums of £—— and £—— the Receiver hereby respectively acknowledges) THIS DEED WITNESSETH as follows :—

Conveyance by Official Receiver and Mortgagees.

1. THE Mortgagees, As Mortgagees, and according to their term hereby surrender and release and the Receiver, As Trustee, in exercise of the power for this purpose conferred on him by the Bankruptcy Act, 1914, hereby conveys and confirms unto the Purchaser :

Parcels.

ALL, &c. (*see Forms, Sec. II, p.* 471, *supra*),

TO HOLD unto the Purchaser in fee simple, discharged from all claims under the recited Mortgage and to the intent that the said mortgage term shall merge.

[2 and 3. *Add, if required, Forms Nos.* 4 *and* 8, *Sec. III, pp.* 480, 483, *supra.*]

IN WITNESS, &c.

No. VI.

CONVEYANCE *by the* TRUSTEE *of a* BANKRUPT *of a* FREEHOLD ESTATE *to which he was* ENTITLED *for an* ENTAILED INTEREST *in* POSSESSION,(*i*) *the Representatives of the late tenant for life concurring.* (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN X. Y., of, &c. (*trustee*) (hereinafter called the Vendor), of the 1st part, R. T., of, &c., and C. T., of, &c. (hereinafter called the Trustees) of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part : WHEREAS :—

Power to deal with estate tail.

Settled land.

(*i*) S. 55 (5) of the Bankruptcy Act, 1914, authorises the trustee to deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it, and incorporates ss. 56—73 inclusive of the Fines and Recoveries Act, 1833. But the legal estate in settled land does not vest in the trustee until the estate owner becomes absolutely and beneficially entitled free from the limitations, &c., under the settlement: S. L. Act, 1925, s. 103. Hence to acquire the legal estate the trustee would first have to bar the entail. If a settlement were on foot and the bankrupt refused to exercise his statutory powers, the court can give the powers to the S. L. Act trustees under s. 24 to enable them to make title.

Entailed interests.

Entailed interests only take effect in equity (L. P. Act, 1925, s. 130), the trustee in bankruptcy could convey an equitable fee simple to the purchaser (*ib.*, s. 42 (4) (iii)) and allow him to get in the legal estate (S. L. Act, 1925, s. 16) when the settlement came to an end. But so long as a settlement subsists the proper way to make title to the land is under the S. L. Act, 1925 (see L. P. Act, 1925, s. 42), leaving the trustee in bankruptcy to disentail the capital money arising on the sale.

(1) By a Settlement dated, &c., the property hereinafter described (with other property) was limited, after the marriage of the said E. B. and R. F. (afterwards R. B.) to the use of the said E. B. during his life with remainder, to uses for securing a jointure rentcharge to the said R. B. (which failed by reason of her death on the —— day of —— in the lifetime of the said E. B.), and subject thereto to the use of the Trustees for a term of 500 years for securing portions (which ceased by reason of there being only one child of the said marriage), and subject to the said term, to the use of the first and other sons of the then intended marriage successively according to seniority in tail male with divers remainders over And the Trustees were thereby appointed to be trustees for the purposes of the Settled Land Acts, 1882 to 1890 : Settlement.

(2) The marriage between the said E. B. and R. F., was solemnised on the —— day of —— and the said A. B., the only child of the said marriage was born on the —— day of —— : Marriage and birth.

(3) By a Vesting Deed, dated, &c., the Trustees declared that the said property (with other property) was vested in the said E. B. in fee simple on the trusts of the recited Settlement and that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 : Vesting instrument.

(4) The said E. B. died, &c., and on the —— day of —— his Will, dated, &c., was as respects the land settled by the recited Settlement proved at the —— Probate Registry by the Trustees : Death of tenant for life and probate.

(5) and (6) (*Recite order of adjudication against A. B., appointment of Vendor as Trustee, and agreement for sale as in Precedent IV of this Group, supra. Adding agreement by the Trustees to concur*) :

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration, &c., the Trustees, As the Personal Representatives of the said E. B. deceased, at the request of the Vendor, hereby convey and the Vendor, As Trustee, and in exercise of the power for this purpose conferred on him by the Bankruptcy Act, 1914, and of all other powers, hereby conveys and disposes of unto the Purchaser, Conveyance to Purchaser discharged from estate tail and remainders over.

All, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

To hold unto the Purchaser in fee simple, discharged from all interests in tail male or in tail of the said A. B. and all estates, Habendum free from estate tail.

rights, interests and powers to take effect after the determination or in defeasance of such interests in tail male or in tail or any of them and from the limitations of the recited Settlement.

[2 and 3. *Add acknowledgment as to documents, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.(*j*) (*k*)

No. VII.

CONVEYANCE *by the* TRUSTEE *of a* BANKRUPT *of a* FREEHOLD ESTATE *to which he was* ENTITLED *for an* ENTAILED INTEREST *in* REMAINDER (*l*) *to create a base fee in remainder.* (*Equitable Interest.*)

THIS CONVEYANCE is made, &c. (*parties, Vendor and Purchaser only*) (*Recite creation of estate tail as in last precedent marriage, birth and Vesting Deed* (*omitting the death of E. B.*), *also order of adjudication and appointment of Trustee, as in Precedent IV of this Group, supra*) :

Agreement for sale of a base fee.

(5) The Vendor, as such trustee as aforesaid, has agreed to sell to the Purchaser the property hereinafter described for an equitable interest in base fee expectant on the death of the said E. B. at the price of £—— :

NOW in pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendor (the receipt

---

(*j*) The deed need not be enrolled : L. P. Act, 1925, s. 133.

Registered land.

(*k*) In the case of registered land, under the same circumstances, the S. L. Act trustees, as special personal representatives of the deceased proprietor would probably transfer the land, at the request of the trustee in bankruptcy, to the purchaser, by a simple transfer in the ordinary form, under r. 170, inserting after the consideration " paid to X. Y. of &c. (*the trustee in bankruptcy*) who is entitled in equity to receive it." The disentailing deed would be separately executed and the purchaser would not be concerned with it.

Enlargement of base fees.

(*l*) On the death of the tenant for life the purchaser must arrange with the bankrupt, if discharged, or his trustee, for the enlargement of the base fee : F. and R. Act, 1833, ss. 19, 38 and 74. When the base fee has been enlarged and the settlement has come to an end he will call on the special representatives of the tenant for life or other the estate owner in whom the legal estate is vested to convey it to him. So long as the base fee in possession remains unbarred the settlement will subsist (S. L. Act, 1925, ss. 1 (1) (ii) (*c*), 3, 20 (1) (iii)) ; so long as the bankrupt is living he will, it seems (s. 104 (1)), be entitled to call for a vesting instrument to be made in his favour ; if, however, he has no issue capable of succeeding under the entail there should be no difficulty in agreeing to enlarge the base fee. Notice in writing of the conveyance must be given to the S. L. Act trustees : L. P. Act, 1925, s. 137 (2) (i).

Notice.

of which sum the Vendor hereby acknowledges) THIS DEED WITNESSETH as follows :—

Conveyance.

1. THE Vendor, as Trustee, in exercise of the power for this purpose conferred by the Bankruptcy Act, 1914, and of all other powers hereby conveys unto the Purchaser,

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum.

TO HOLD unto the Purchaser in fee simple subject to the equitable life interest of the said E. B. and to his statutory powers but discharged from all interests in tail male or in tail of the said A. B. and all estates, rights, interests and powers to take effect after the determination or in defeasance of such interests in tail male or in tail or any of them and to the intent that those interests may be hereby converted into an equitable base fee.

Agreement to enlarge.

2. PROVIDED that if the said E. B. dies in the lifetime of the said A. B., leaving the said A. B. an undischarged bankrupt, the Vendor or his successors in office will at the cost of the Purchaser or the persons deriving title under him in exercise of any statutory powers available execute all such further assurances for enlarging the said base fee into a fee simple as the Purchaser or the persons deriving title under him may reasonably require.

[3 and 4. *Add Form No.* 4, *Sec. III, and Form No.* 8, *Sec. III, pp.* 480, 483, *supra, if required.*]

IN WITNESS, &c.(*m*)

No. VIII.

ASSIGNMENT *of* LEASEHOLDS *by the* TRUSTEE *of a* BANKRUPT. (*Legal Estate.*)

THIS ASSIGNMENT is made, &c. (*parties as in Precedent IV of this Group*) (*Recite Lease to A. B., Form No.* 28, *Sec. I, p.* 468 ; *also order of adjudication and appointment of Trustee, as in Precedent IV of this Group*) :

Recite Lease to bankrupt.

Agreement by trustee for sale.

(4) The Vendor, as such trustee as aforesaid, has agreed to sell to the Purchaser the premises comprised in the recited Lease free from incumbrances for the residue of the term thereby granted at the price of £—— :

NOW THIS DEED WITNESSETH as follows :—

Assignment by trustee.

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Trustee, and in exercise of the power for

(*m*) In the case of registered land this form will apply, as it does not affect the legal estate or registered proprietorship. Application should be made to enter a priority inhibition in the Minor Interests Index.

Registered land.

this purpose conferred on him by the Bankruptcy Act, 1914, hereby assigns unto the Purchaser,

ALL the premises comprised in and demised by the recited Lease,

TO HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, performed, and observed.

No covenant to pay rent, &c.

2. NO covenant shall be implied in these presents by virtue of section seventy-seven of the Law of Property Act, 1925.(*n*)

[3 and 4. *Add acknowledgment as to documents, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

No. IX.

CONVEYANCE *of the* FEE SIMPLE *to* MORTGAGEES *by the* TRUSTEE *of a* BANKRUPT *in consideration of the release of part of the Mortgage Debt.*(*o*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN X. Y., of, &c. (hereinafter called the Trustee), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Mortgage.

(1) and (2) (*Recite mortgage for* £5,000 *by A. B. to the Mortgagees, as in Form No.* 2, *Sec. I, p.* 452, *supra, and conversion into long term mortgage, same Form*):

Bankruptcy proceedings.

(3) and (4) (*Order of adjudication and appointment of Trustee, as in Precedent IV of this Group, supra*):

On sale of leaseholds by Trustee of bankrupt, Purchaser is not obliged to indemnify.

(*n*) On the sale of leaseholds by the trustee of a bankrupt, the purchaser cannot be required to enter into a covenant to indemnify him or the bankrupt against the payment of the rent, and the observance of the covenants contained in the lease, such a covenant being unnecessary, as the liability ceases on the assignment. Moreover, it would seem to be a breach of trust on the part of the trustee to stipulate for such a covenant, as it might diminish the value of the lease to the purchaser, and therefore reduce the purchase-money: *Wilkins* v. *Fry* (1816), 1 Mer. at p. 265; and see Dart, 7th ed., 581. This rule does not apply where an equitable mortgagee calls for an assignment of the lease to himself: *Ex p. Buxton* (1880), 15 Ch. D. 289.

Disclaimers of leases.

As to disclaimers of leases by a trustee in bankruptcy: Bkcy. Act, 1914, s. 54; and as to registered leases so disclaimed: L. R. Act, 1925, s. 42 (2).

Vesting of equity of redemption in mortgagee.

(*o*) See Bkcy. Act, 1914, 2nd Sch., r. 13. Under this rule, if the mortgagee gives notice to the trustee that he requires the security to be redeemed or that he wishes to realise it, and if the trustee does not within six months signify his election to exercise the power of redeeming, &c., the equity of redemption will thereupon, without any conveyance, vest in the mortgagee. As to the rules regulating proof by secured creditors, see Bkcy. Act, 1914, 2nd Sch., r. 10, *et seq.*, and Wms. Bkcy., 13th ed., p. 467, *et seq.*

Stamp.

The stamp on this deed will be £40, viz., £1 per £100 on £4,000.

(5) The Mortgagees proved in the said bankruptcy for the sum of £5,810, being the amount owing to them for principal, interest, and costs, and in their proof valued their said security at £4,000 : Proof by Mortgagees of debt and value of their security.

(6) The Trustee, as such trustee as aforesaid, has elected not to redeem the said security, nor to require it to be realised under the provisions for that purpose contained in the Second Schedule to the Bankruptcy Act, 1914 : That Trustee has declined to redeem.

(7) It has been agreed that the property comprised in the said security shall be conveyed to the Mortgagees in fee simple free from all right of redemption therein in consideration of the sum of £4,000, part of the said mortgage debt, and that the proof of the Mortgagees in the said bankruptcy shall be reduced by that sum accordingly : Agreement to release equity of redemption.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £4,000, part of the said mortgage debt (and from which sum of £4,000 the Mortgagees hereby release the said A. B. and the Trustee), the Trustee, As Trustee, hereby conveys and releases unto the Mortgagees, Trustee releases fee simple to Mortgagees.

ALL the premises comprised in the recited Mortgage, or which have by any means become subject thereto,

TO HOLD unto the Mortgagees in fee simple, discharged from all right of redemption under the recited Mortgage and to the intent that the said mortgage term shall merge in the fee simple.

IN WITNESS, &c.

No. X.

ASSIGNMENT *by the* TRUSTEE *of a* BANKRUPT *to give effect to an* ARRANGEMENT *whereby after a* LEASE *has been assigned several times, each* ASSIGNMENT *containing a* COVENANT *by the assignee to* INDEMNIFY *the assignor against the rent and lessee's covenants,* ASSIGNEE NO. 1 *has become* BANKRUPT, *and the original* LESSEE, *who has been called upon to pay the* RENT, BUYS *from the* BANKRUPT'S TRUSTEE *the benefit of the* COVENANTS *entered into by* ASSIGNEE NO. 2.(*p*)

THIS ASSIGNMENT is made, &c., BETWEEN X. Y., of, &c. (hereinafter called the Trustee), of the one part, and A. B., of, Parties.

(*p*) See *Re Perkins* [1898], 2 Ch. 182 ; 67 L. J. Ch. 454 ; *British Union and N. Insurance Co.* v. *Rawson* [1916], 2 Ch. 476 ; 85 L. J. Ch. 769 ; and notes to Prec. VII, Group A, p. 495, *supra.*

Recitals of Lease, assignment, and bankruptcy.

&c. (*original lessee*), of the other part: WHEREAS—(*Recite Lease, Form No.* 28, *Sec. I, p.* 468, *supra, to A. B., assignment by A. B. to C. D., with covenant by C. D. to indemnify A. B. against rent and lessee's covenants, assignment by C. D. to E. F., with similar covenant by E. F. with C. D., death of E. F. and appointment of executors, and assignment by executors to a man of straw, bankruptcy of C. D., and the appointment of X. Y. to be his trustee, see Precedent IV of this Group, p.* 631):

That lessee had paid rent in arrear to lessor.

(7) The rent reserved by the recited Lease having fallen into arrear, the said A. B. was subsequently required by the lessor to pay and did pay the arrears amounting to the sum of £—— :

Claim against bankrupt's estate.

(8) The said A. B. has carried in a claim against the estate of the said C. D. for the said sum of £——, and also for the further sum of £——, being the estimated amount of the liability of the said A. B. under the covenants contained in the said Lease, making together the sum of £—— :

Agreement for compromise.

(9) The Trustee has by way of compromise of the claim of the said A. B. against the estate of the said bankrupt agreed to sell to him the full benefit of the covenants on the part of the said E. F. contained in recited Assignment of the —— day of —— (*second assignment*), with the rights and powers hereinafter assigned in consideration of the sum of £—— and of the said A. B. executing such release as is hereinafter contained:

NOW THIS DEED WITNESSETH as follows:—

Trustee of bankrupt assigns to lessee benefit of covenants in assignment No. 2.

1. FOR the purpose of giving effect to the aforesaid arrangement and in consideration of the sum of £—— now paid by the said A. B. to the Trustee (*the receipt, &c.*), and of the release hereinafter contained, the Trustee, As Trustee, hereby assigns unto the said A. B.,

FIRST the full benefit of the covenants by the said E. F. with the said C. D. contained in the recited Assignment of the —— day of —— (*second assignment*):

SECONDLY the right to recover and receive from the estate of the said E. F., and to retain for the benefit of the said A. B. all such damages, costs, and other sums of money (if any), and to enforce for the like benefit all such other relief by way of indemnity or otherwise as the said C. D., but for his bankruptcy, or the Trustee or other the trustee for the time being in the said bankruptcy, might have been entitled now or at any time hereafter to recover or to enforce for the benefit of the said C. D. or of his estate for any breach committed or hereafter

to be committed of the said covenants or any of them if these presents and the arrangement hereby made had not been executed or made:

AND THIRDLY the right to bring, prosecute, carry on, compound or release any action or proceeding for any such purpose, and all other rights and powers which the Trustee, as such trustee as aforesaid, has power to transfer to the said A. B. in connexion with the premises,

TO HOLD unto the said A. B. absolutely.(*q*)

Release of bankrupt's estate from claim under covenants in assignment No. 1.

2. IN consideration of the assignment hereinbefore contained the said A. B. hereby withdraws the said proof for the sum of £—— and releases the Trustee, as such trustee, and the estate of the said bankrupt (other than the asset hereinbefore assigned) from all claims and demands under or in respect of the covenants by the said C. D. with the said A. B. contained in the recited Assignment of the —— day of —— (*first assignment*).

IN WITNESS, &c.

No. XI.

CONVEYANCE *by the* ADMINISTRATOR *of a* CONVICT *of* FREEHOLDS *to which he was* ENTITLED *at the* DATE *of his* CONVICTION.(*r*) (*Legal Estate.*)

Parties

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (*administrator*) (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Conviction and judgment of penal servitude.

(1) G. H. was convicted of felony at the assizes held at —— in the month of —— last, and judgment of penal servitude was thereupon duly recorded against him [by the High Court of Justice]:

Appointment of administrator.

(2) By virtue of the Forfeiture Act, 1870, ——, His Majesty's principal Secretary of State for the Home Department,(*s*) being the person authorised for that purpose by the Crown under the Royal Sign Manual, has, by a writing dated the —— day of

(*q*) Notice of the assignment should be given to the executor of E. F. This Precedent applies also to registered land.

(*r*) See Forfeiture Act, 1870, the effect of which is saved by L. P. Act, 1925, s. 7 (3) (*a*). Trust and mortgage estates vested in a convict do not pass to the administrator under the Act: T. Act, 1925, s. 65. Convicts' trust estates.

The Public Trustee may act as administrator: P. T. Act, 1906, s. 2 (1) (*e*).

(*s*) See F. Act, 1870, s. 9. A general authority under the section was given to the Home Secretary by warrant on 15th November, 1870.

——, committed the custody and management of the property of the said G. H. during His Majesty's pleasure to the Vendor as the administrator thereof:

Seisin of convict.

(3) At the date of his conviction the said G. H. was seised in fee simple in possession free from incumbrances of the property hereinafter described:(*t*)

Agreement for sale.

(4) The Vendor, as such administrator as aforesaid, has agreed to sell (*u*) to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Conveyance by administrator.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser to the Vendor as such administrator as aforesaid (the receipt of which sum the Vendor hereby acknowledges), the Vendor, in exercise of the power for this purpose conferred on him by the Forfeiture Act, 1870, and of all other powers, and As Trustee, hereby conveys unto the Purchaser

Parcels.

All those, &c. (*see Forms, Sec. II, p.* 471, *et seq.*),

Habendum.

To hold unto the Purchaser in fee simple.

[2 and 3. *Add acknowledgment as to documents, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.

Registered land.

Note.—*As to sales of registered land on behalf of lunatics, defectives, bankrupts and convicts—*

Lunatics.

(*i*) *The committee or receiver of a lunatic or defective proprietor will convey by transfer in ordinary form, without recitals, signing the name of the lunatic or defective; in the attestation clause it will appear that the lunatic or defective is conveying by the agency of the committee or receiver. If the evidence of his appointment is not already filed in the registry it should accompany the transfer on registration: L. R. Act,* 1925, *s.* 111 (5) *and* (6).

Bankrupts.

(*ii*) *The trustee of a bankrupt proprietor* (*or, pending his appointment, the Official Receiver*) *is entitled to be registered as proprietor in his place and, when so registered, will convey as such by transfer in the ordinary form: L. R. Act,* 1925, *ss.* 42 *and* 43.

Convicts.

(*iii*) *No express provision is made in the L. R. Act,* 1925, *or the L. R. R.,* 1925, *for the administrator of a convict, but he would*

Estate tail of convict.

(*t*) A convict can bar an estate tail, as this is not an act of alienation within s. 8 of the F. Act, 1870; his administrator has no power to do so: *Re Gaskell and Walters* [1906], 2 Ch. 1; 75 L. J. Ch. 503.

Vesting.

(*u*) The property vests in the administrator automatically on his appointment under s. 10. The power of sale is conferred by s. 12.

appear to be entitled to convey by transfer in ordinary form as "a person authorised to make the disposition" under L. R. Act, 1925, s. 47. There should be no recitals, but the transfer should commence as follows: "In consideration, &c., I, A. B., of, &c., administrator of the property of C. D. [the registered proprietor], a convict, hereby transfer," &c. If the evidence of his appointment is not already filed in the registry it should accompany the transfer on registration.

GROUP K.—CONVEYANCES ON SALES UNDER ORDERS OF THE COURT.

No. I.

CONVEYANCE *of* FREEHOLDS *on a* SALE *by* ORDER *of the* HIGH COURT *or* COUNTY COURT *in an* ADMINISTRATION ACTION.(*a*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees with the legal estate*) (hereinafter called the

(*a*) On a sale under an order of the court, all persons having a legal estate in the property, whether parties to the action or not, should concur in the conveyance, but the purchaser is not entitled to the concurrence of any persons being parties to the suit, or otherwise bound by the proceedings therein, whose interests are merely equitable: Dart, 7th ed., 1182, *et seq.*

Proper parties on sale under order of court.

To avoid any questions, it has been usual to provide in the conditions of sale that the purchaser should not require the concurrence in the conveyance of persons entitled only to equities, see Special Conditions of Sale by the court (p. 319, *supra*), but in view of L. P. Act, 1925, s. 2 (1) (iv), this practice can be safely abandoned where a legal estate is conveyed.

Construction of L.P. Act, 1925, s. 204.

The L. P. Act, 1925, s. 204, provides that an order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice of service, whether the purchaser has notice of any such want or not. The effect of this section is that if an order for the sale of land professes to bind the interests of persons who are not parties to the proceedings or to dispense with the concurrence of any interested persons, a purchaser under the order is not bound to inquire as to its regularity in this respect, and has a good title, though it may be irregular: *Re Hall Dare's Contract* (1882), 21 Ch. D. 41; 51 L. J. Ch. 671; *Mostyn* v. *M.* [1893], 3 Ch. 376; 62 L. J. Ch. 959; *Re Whitham*, 84 L. T. 585; [1901], W. N. 86; *Re Harrowby and Paine* [1902], W. N. 137. But if, having regard to the nature of the proceedings in which an order for sale is made, it is to be presumed that the court intends to sell the estate and interest of A. only, the sale will not bind any person whose interest is paramount to that of A., and a purchaser will not by virtue of s. 204 have a good title against that person: *Jones* v. *Barnett* [1900], 1 Ch. 370; 69 L. J. Ch. 242.

Payment into court.

Payment into court is a complete discharge to the payer (L. P. Act, 1925, 203 (1)); as to payment into court by trustees, see T. Act, 1925, s. 63.

Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part) WHEREAS:—

Probate or letters of administration.

(1) X. Y., being at his death seised of the property hereinafter described for an estate in fee simple in possession free from incumbrances died on —— having by his Will dated ——, appointed the Vendors to be his executors who, on the — day of —— duly proved the same at the —— Probate Registry [or died on —— intestate, and on the —— day of —— Letters of Administration to his estate were granted to the Vendors by the —— Probate Registry (*b*)]:

Order of court for sale.

(2) By an Order of the Chancery Division of the High Court of Justice made on the —— day of —— [by the Honourable Mr. Justice ——] [*or* by an Order of the County Court of —— made on the —— day of —— by his Honour Judge ——], in the matter of the estate of X. Y., deceased, —— *v.* ——, 19—, Y., No.——, it was (amongst other things) ordered that the real estate of the said testator should be sold, with the approbation of the Judge, and that the money to arise by such sale should be paid into court to the credit of the said action to an account entitled "Proceeds of sale of real estate":

That property was put up for sale.

(3) Pursuant to the said Order the real estate of the said testator was on the —— day of —— last put up for sale by public auction in several Lots, and the property hereinafter described constituted Lot 2 at the said sale:

That Purchaser was declared the highest bidder, and paid deposit.

(4) At the said sale the Purchaser was the highest bidder for and was declared the purchaser of Lot 2 aforesaid at the price of £——, and he thereupon paid the sum of £—— as a deposit and in part payment of his purchase-money to the person appointed

(*b*) If the testator died after 1897 it will be unnecessary to recite the devise to the trustees. Part I of the L. T. Act, 1897, enabled executors to sell without an administration action. This Act has rendered sales rare in administration actions, except in the case of copyholds.

Now that copyholds have been enfranchised by L. P. Act, 1922, and all land will, on a death after 1925, vest in the personal representatives under Ad. of E. Act, 1925, which gives wide powers to them, the cases where an administration action can be properly advised for the purposes of a sale will seldom occur.

Sales on application of mortgagees and creditors.

The majority of sales by the court will be confined to sales on the application of debenture-holders, mortgagees, or creditors: see L. P. Act, 1925, ss. 90, 91, 195; Ad. of E. Act, 1925, s. 38 (2).

Vesting orders and orders appointing a person to convey.

Vesting orders or orders appointing a person to convey will be made when requisite for making title to a legal estate; as to these, see L. P. Act, 1925, ss. 3 (5), 9, 30, 90, 91, 171 (2); Ad. of E. Act, 1925, ss. 38 and 43; T. Act, 1925, ss. 44-56.

by the Judge to receive the same, who has since paid the said deposit into court to the credit of the said action, leaving the balance of £—— payable into court by the Purchaser pursuant to the recited Order :

Master's certificate of result of sale.

(5) The Master attached to the Chambers of the Judge [*or* the Registrar of the said Court] by his certificate (*c*) dated the —— day of —— and filed on the —— day of —— duly certified the result of the said sale :

Payment of purchase-money into court (*d*).

(6) Under a direction of the Master [*or* the Registrar] dated the —— day of ——, 19—, the Purchaser has paid the sum of £——, being the balance of his purchase-money after deducting the said deposit [together with the sum of £—— for interest thereon at the rate of £— per cent. per annum (making together the sum of £——)], into court to the credit of the said action to the account aforesaid, as the Vendors hereby acknowledge :(*e*)

NOW THIS DEED WITNESSETH as follows :—

Conveyance by holders of legal estate.

1. In obedience to the said Order and in consideration of the said principal sums of £—— and £—— so paid by the Purchaser into court as aforesaid, the Vendors, As Trustees [*or* As the Personal Representatives of the said X. Y., deceased], hereby convey unto the Purchaser,

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Highest bidder.

(*c*) Until the certificate becomes binding the highest bidder has not become the purchaser with the rights and liabilities of an owner, and any loss to the property falls on the vendor : *Re Thomas* [1911], 2 Ch. 389 ; 80 L. J. Ch. 617 : but see Seton, 7th ed., 334. For forms of certificates, see Daniell's Ch. Forms, p. 652, *et seq.*

Variation where timber is paid for at a valuation.

(*d*) If the timber is to be paid for on a valuation, substitute the following recital :—

(6) Under a direction, &c. (*as above*), the Purchaser has paid the sum of £——, being the balance of the said purchase-money after deducting the said deposit, and also the sum of £——, being the value of the timber on the property which, according to the conditions of sale, was to be paid for at a valuation, and also the sum of £—— for interest on the said sums of £—— and £—— at the rate of £— per cent. per annum from the —— day of —— last (making together the sum of £——), into court to the credit aforesaid.

Evidence of payment into court.

(*e*) The receipt of one of the cashiers of the Bank of England or of the registrar of the county court should be obtained by the purchaser as evidence of payment into court.

Habendum.

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq., supra*),
TO HOLD unto the Purchaser in fee simple.

[2 and 3. *Add acknowledgment for production of documents, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.(*f*)

No. II.

CONVEYANCE *of* FREEHOLDS *on a* SALE *under the* PARTITION ACTS, *where* CO-HEIRESSES *have separately settled their* SHARES,(*g*) *and the Contract for Sale was made* ***before*** 1926. (*Legal Estate.*)

Parties.

THIS INDENTURE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the A Trustees), of the 1st part E. F., of, &c., of G. H., of, &c. (hereinafter called the B Trustees), of the 2nd part, J. K., of, &c., and L. M., of, &c. (hereinafter called the C Trustees), of the 3rd part, and O. P., of, &c. (hereinafter called the Purchaser), of the 4th part: WHEREAS:—

Intestacy and devolution of property to co-heiresses.

(1) X. Y., being at his death seised in fee simple in possession free from incumbrances of the property hereinafter described,

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Registered land.

(*f*) In the case of registered land the transfer will be in the ordinary form, adding after the consideration (if desired) "paid into court to the credit of an action entitled, &c., to an account entitled, &c., proceeds of sale of real estate."

Where sale is carried out as if the L.P. Act, 1925, and any enactment thereby replaced had not been passed.

(*g*) Under L. P. Act, 1925, 1st Sch., Pt. IV, para. 1 (10), the provisions vesting the entirety of land, held in undivided shares, in trustees for sale, do not apply where there is a subsisting contract for sale on 1st January, 1926, if it is completed in due course, in which case title may be made as if the Act had not been passed; nor do they apply where a partition action is then pending if an order for partition or sale is subsequently made. Under para. 1 (11) the proceedings may be stayed by order. When such an order is made the Partition Acts cease to apply, and that part of the Schedule takes effect. The court, in the order staying the proceedings, may appoint trustees of the entirety of the land which will thereupon vest in them on trust for sale, and may authorise the trustees to raise the costs by legal mortgage. It is conceived that it will frequently be expedient to stay the proceedings and appoint trustees of the land unless there is a subsisting contract for sale. By the Partition Act, 1868 (repealed, save as above), it was provided that, in suits for partition, where a decree for partition might have been made, if from the nature of the property or the number of the parties interested therein, or the absence or disability of some of those parties, or any other circumstance, a sale of the property was considered by the court to be more beneficial than a division, the court might, on the request of any of the parties, direct a sale (s. 3); *or* if the parties interested, individually or collectively, to the extent of one

Provisions of Partition Acts (repealed).

died on the —— day of ——, 1880,(*h*) intestate and a widower, leaving his three daughters his heiresses-at-law (namely), R. Y., S. Y., and T. Y., each of whom accordingly became entitled to a one third share in the said property :

Short recital of present state of the title by reference to the schedules.

(2) The legal estate in the property hereinafter described is vested in fee simple as to the one third share of the said R. Y. (as appears from the First Schedule hereto) in the A Trustees, as to the one third share of the said S. Y. (as appears from the Second Schedule hereto) in the B Trustees, and as to the one third share of the said T. Y. (as appears from the Third Schedule hereto) in the C Trustees :

Order for inquiries and sale after Master's certificate.

(3) By an Order (hereinafter called the Order of 19—) of the Chancery Division of the High Court of Justice, made on the —— day of —— by the Honourable Mr. Justice —— in a partition action Y. *v.* Y., 19—, Y., No.——, it was ordered (among other things) that inquiries should be made of what particulars the freehold property of the said X. Y., deceased, consisted at the time of his death and at the date of the Order of 19—, and as to who were the persons interested in the said freeholds, and for what estates and interests and in what shares and whether they were parties to the said action And it was also ordered that if it should be certified that all persons interested in the said property were parties to the said action or had been served with notice of judgment or were persons upon whom such service had been dispensed with, and if the persons interested in one moiety or upwards of the said property should request a sale of the said property, the same should be sold (*i*) with the approbation of the Judge And it was further ordered that the

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moiety or upwards in the property in question, requested the court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property among the parties interested, the court should, unless it saw good reason to the contrary, direct a sale (s. 4) ; *or* if any party interested in the property requested the court to direct a sale and a distribution of the proceeds, the court might, unless the other parties interested in the property, or some of them, undertook to purchase the share of the party requesting the sale, direct a sale : s. 5.

Preparation of conveyance on a sale by the court.

There were two ways of preparing a conveyance under an order for sale—either the recitals might, as in the text, be confined exclusively to the devolution of the legal estate, merely stating that the equities were bound by the order, or the recitals, might show that the equities are bound.

(*h*) *I.e.*, before the L. T. Act, 1897.

Conversion by order for sale.

(*i*) An order for sale in a partition action operated as a conversion of the share of a person *sui juris* as from the date of the order, and if he died before completion his share devolved as personalty : *Re Dodson* [1908], 2 Ch. 638 ; 77 L. J. Ch. 830 ; *Fauntleroy* v. *Beebe* [1911], 2 Ch. 257 ; 80 L. J. Ch. 654 ;

money to arise from such sale should be paid into court to the credit of the said action to an account entitled "Proceeds of sale of freehold hereditaments":

Master's certificate. Result of inquiries.

(4) Pursuant to the Order of 19— the Master attached to the Chambers of the Judge made his certificate in the said action dated the —— day of ——, 19—, and filed on the —— day of ——, 19—, and thereby certified (among other things) that the freehold property of the said X. Y., deceased, included both at the time of his death and at the date of the Order of 19— the property hereinafter described, that the legal estate in the said property was vested in the parties hereto of the first three parts in the shares hereinbefore recited, and that all persons interested in the said property were parties to the said action or had been served with notice of the said judgment:

All interests are bound by the Order.

(5) All persons in any manner interested in the said property are bound by the Order of 19— :

Sale by auction and payment of deposit.

(6) The persons interested in two-thirds of the said property requested a sale and accordingly the property hereinafter described (with other property) was on the —— day of ——, 19—, with the approbation of the Judge, put up for sale by auction and the Purchaser was the highest bidder for and declared the purchaser of the property hereinafter described at the price of £—— and paid a deposit of £—— as part of his purchase-money, leaving the balance of £—— payable into court by him pursuant to the Order of 19— :

Certificate of result of sale before 1926.

(7) The result of the said sale was duly certified by the Master by his certificate dated the —— day of ——, 1925, and filed on the —— day of ——, 1925, and it appears from such certificate that the Purchaser was the purchaser of the property hereinafter described at the price aforesaid and had paid the aforesaid deposit to the person appointed by the Judge to receive the same, who duly paid the said deposit into court to the credit of "Y. *v.* Y., 19—, Y., No. ——, Proceeds of sale of freehold hereditaments":

Payment of balance of purchase-money into court.

(8) Pursuant to the Order of 19— the Purchaser has paid the sum of £—— (being the balance of his purchase-money of £——) into court to the credit of "Y. *v.* Y., 19—, Y., No. ——, Proceeds of sale of freehold hereditaments," and which payments

Herbert v. *H.* [1912], 2 Ch. 268; 81 L. J. Ch. 733. An infant's share was not so converted even though sold at his request and for his benefit: *Hopkinson* v. *Richardson* [1913], 1 Ch. 284; 82 L. J. Ch. 211.

into court as aforesaid of the said sums of £—— and £—— (making the aggregate purchase-money of £——) the parties hereto of the first three parts hereby acknowledge:

NOW THIS INDENTURE WITNESSETH as follows:—

1. PURSUANT to the Order of 19— and in consideration of the payments into court as aforesaid, the A Trustees as to the one third share of the said R. Y., and As Trustees, hereby convey, and the B Trustees as to the one third share of the said S. Y., and As Trustees, hereby convey, and the C Trustees as to the one third share of the said T. Y., and As Trustees, hereby convey unto the Purchaser, Conveyance by persons having legal estate.

ALL THOSE, &c. (*see Forms in Sec. II, p. 471, et seq.*), Parcels.

TO HOLD unto and TO THE USE (*j*) of the Purchaser in fee simple. Habendum.

2. THE A Trustees hereby acknowledge the right of the Purchaser to production of the deeds mentioned in the First Schedule hereto and to delivery of copies thereof. Acknowledgment as to documents.

3 and 4. (*Similar acknowledgments by the B and C Trustees as to the deeds in the second and third Schedules respectively.*)

IN WITNESS, &c.(*k*)

THE FIRST SCHEDULE.

Documents and particulars showing the devolution of the one third share of the said R. Y.

25th March, 1881. By an Indenture of this date and made, &c. (*Recite the title to the legal estate in this manner.*)

THE SECOND SCHEDULE.

Documents and particulars showing the devolution of the one third share of the said S. Y.

THE THIRD SCHEDULE.

Documents and particulars showing the devolution of the one-third share of the said T. Y.(*l*)

(*j*) The precedent takes the old form as completion is carried out under the old law.

(*k*) In the case of registered land the several trustees, in the case supposed, would be the registered proprietors of the several shares and would concur in a transfer in the ordinary form. If desired an addition might be made respecting the consideration as in the note at the end of the preceding Precedent. Registered land.

(*l*) In former editions a Precedent was given of a conveyance under the S. E. Act, 1877 (now repealed), to cover the case of a tenant for life having disposed Repeal of S.E. Act, 1877.

SECTION II.—CONVEYANCES ARRANGED ACCORDING TO THE CHARACTER OF THE GRANTEES OR PURCHASERS (OTHER THAN CORPORATIONS).

GROUP A.—CONVEYANCES TO CO-OWNERS AND MARRIED WOMEN.(*a*)

No. I.

CONVEYANCE *to* CO-OWNERS *who contribute the* PURCHASE-MONEY *in equal shares.*(*b*) (*Legal Estate*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Purchasers), of the other part:

Seisin and agreement for sale.

WHEREAS (*Form No.* 1, *Sec. I, p.* 452, *adding in the Agreement*

Loss of all beneficial interest by a tenant for life.

of his life interest and refusing to exercise his statutory powers, the assignee by a petition under s. 23 (*Re Ebsworth and Tidy*, 1889, 42 Ch. D. 23; 58 L. J. Ch. 665,) obtaining leave to exercise the powers under s. 16.

This case is now covered by S. L. Act, 1925, s. 24. Under that section the proper procedure will be to apply to the court to authorise the S. L. Act trustees to exercise the statutory powers in the name and on behalf of the tenant for life.

Infant contingently entitled.

There was one other case where the S. E. Act, 1877, was of use, namely, where an infant was only contingently entitled and the S. L. Act, 1882, s. 59, did not apply: *Re Liddell* (1882), 52 L. J. Ch. 207; *Re Sparrow's S. E.* (1892), 1 Ch. 412; 61 L. J. Ch. 260 (not where a child took the rents and profits till another attained a vested interest, here he had the powers of a tenant for life: *Re Walmsley's S. E.* [1911], 105 L. T. 332; 55 Sol. J. 600). In the contingent case Conv. Act, 1881, s. 41, brought the S. E. Act, 1877, into play.

Statutory owners.

This case is now met by S. L. Act, 1925, ss. 1 (1) (iii), and 23, under which the powers will be exercised by the persons of full age on whom they are conferred or, if none, by the S. L. Act trustees.

(*a*) The Precedents in this group can be readily adapted to the case of leaseholds or enfranchised land.

Conveyances to purchasers in undivided shares impossible.

(*b*) It is impossible (L. P. Act, 1925, s. 34 (2)) to convey land after 1925, to persons so that they may take in undivided shares. Any such conveyance, including a lease, would only operate to vest the land in them, or if there are more than four, in the four first named as joint tenants on trust for sale (*i.e.*, on the statutory trusts: *ib.*, s. 35). They will have power to postpone the sale for an indefinite period (*ib.*, s. 25); and will have all the powers of a tenant for life (*ib.* s. 28), including power to purchase land which must then be conveyed on trust for sale. The powers can be enlarged to any extent, either by the conveyance on trust for sale or subsequently by the persons *sui juris* absolutely entitled free from incumbrances to the proceeds of sale. Though joint tenants beneficially entitled to a legal estate will hold it on trust for sale (s. 36), there is nothing to prevent settled land being vested in two or more tenants for life or statutory owners as joint tenants without creating a trust for sale, though, when the settled land comes to be held in undivided shares, immediately a trust for sale is interposed.

Position of trustees for sale.

for sale "out of money belonging to the Purchasers in equal shares"):

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. In pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchasers to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor, As Beneficial Owner, hereby conveys unto the Purchasers,

All, &c. (*see Forms in Sec. II, pp.* 471, *et seq.*),

To hold unto the Purchasers in fee simple as joint tenants.

Trust for sale with power to postpone, net proceeds to belong to purchasers in equal shares.

2. The Purchasers (*c*) shall stand possessed of the premises hereby conveyed Upon Trust to sell the same, with power at discretion to postpone any such sale And shall stand possessed of the net proceeds of sale (after payment of expenses) and of the net rents and profits of the premises until sale (after payment of rates, taxes, costs of insurance, repairs and other outgoings) In trust for the Purchasers in equal shares as tenants in common.

Additional powers.

3. All the powers which are by the Settled Land Act, 1925, or by section sixty-six of the Law of Property Act, 1925, made exercisable with the leave of the court shall for the purposes of this deed be exercisable at the discretion of the trustees for sale without any order of the court; a mortgagee shall not be concerned to see for what purpose money is raised, and any person dealing for money or money's worth may assume that all transactions not authorised under any statutory power have been duly authorised by the persons beneficially interested.

Devolution of trusts and powers.

(*c*) There is no longer any reason to refer to "the survivor of them or the executors or administrators of such survivor or other the trustees or trustee for the time being hereof," because all trusts and powers will devolve and be exercisable in this way: T. Act, 1925, s. 18. There will be no copyholds after 1925, hence there is no exception. When new trustees are appointed under T. Act, 1925, s. 36, they will have all the powers of original trustees: (*ib.*, sub-s. 7); the result is the same when the appointment is made by the court: *ib.*, s. 43. All trust estates devolve on the personal representatives: (Ad. of E. Act, 1925, ss. 1 and 3); they are for the purposes of old trusts "heirs and assigns" of the deceased: *ib.*, s. 1 (2). Persons dealing with trustees for sale are protected: T. Act, 1925, ss. 16, 17; see also S. L. Act, 1925, s. 16 (2).

Number of trustees.

The danger of any mistake occurring in the application of capital money arising under a trust for sale or under the powers conferred on the trustees for sale is small, for there must be at least two individuals or a trust corporation to give receipts for capital: L. P. Act, 1925, s. 27; T. Act, 1925, ss. 14 (2), 18 (3).

Documents. 4. THE Vendor hereby acknowledges the right of the Purchasers to production (*Form No.* 4, *Sec. III*, *p.* 480).

Certificate. [5. *Add Form No.* 8, *Sec. III*, *p.* 483, *if required.*]

IN WITNESS, &c.(*d*)

No. II.

CONVEYANCE *to* PURCHASERS *as* JOINT TENANTS *beneficially.*(*e*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Purchasers), of the other part:

Seisin and agreement for sale. WHEREAS (*Form No.* 1, *Sec. I*, *p.* 452, *adding* "out of money belonging to the Purchasers upon a joint account"):

NOW THIS DEED WITNESSETH as follows:—

Conveyance to joint tenants. 1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchasers to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchasers

Parcels. ALL THAT, &c. (*see Forms, Sec. II, pp.* 471, *et seq.*),

Habendum. TO HOLD unto the Purchasers in fee simple as joint tenants.(*f*)

Trust for sale; proceeds to be held jointly. 2. THE purchasers shall stand possessed of the premises hereby conveyed upon trust to sell the same with power at discretion to postpone any sale: And shall stand possessed of the net proceeds of sale (after payment of expenses) and of the net rents and profits until sale (after payment of rates, taxes,

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Registered land. (*d*) See as to registered land the general note at the end of this group.

Joint tenancy how created. (*e*) A conveyance to several persons without words indicating that they are to take as tenants in common constitutes a joint tenancy, see Dart, 7th ed., 958, *et seq.* The Bodies Corporate (Joint Tenancy) Act, 1899, enables corporate bodies to hold property in joint tenancy with individuals and as co-trustees: *Re Thompson* [1905], 1 Ch. 229; 74 L. J. Ch. 133. And see notes to last Precedent.

Secret trusts. (*f*) The method of conveying land to trustees as joint tenants without disclosing a trust has been abandoned, because on the death of a trustee the trust had to be disclosed to show that no duties were payable; this would not be the case after 1925, for a land charge would not be registered on account of duty on the death of a trustee.

Where trusts are to be kept off the title the better plan still is to vest the land in trustees on trust for sale, and to declare the trusts of the proceeds by a deed of even date. Save in the case of settled land, including land held on charitable trusts, the joint tenants would by law hold on trust for sale.

costs of insurance, repairs and other outgoings) IN TRUST for the Purchasers as joint tenants beneficially.

Additional powers.

3. ALL the powers which are by the Settled Land Act, 1925, or section sixty-six of the Law of Property Act, 1925, made exercisable with the leave of the court shall for the purposes of these presents be exercisable at the discretion of the trustees for sale without any order of the court; a mortgagee shall not be concerned to see for what purpose money is raised, and any person dealing for money or money's worth may assume that all transactions not authorised under any statutory power have been duly authorised by the persons beneficially interested.

[4 and 5. *Add acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

No. III.

CONVEYANCE *of* FREEHOLDS *to* PARTNERS, *where the* PRICE *is paid out of* PARTNERSHIP MONEY.(*g*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c., carrying on business in partnership at ——, under the style or firm of —— (hereinafter called the Partners) of the other part:

Seisin and agreement to sell.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described and has agreed to sell the same to the Partners for a like estate at the price of £——:

Old form of conveyance on purchase by partners.

(*g*) Before 1926 the partners usually took the legal estate as joint tenants: *Maughan* v. *Sharpe* (1864), 17 C. B. (N. S.) 443; *Wray* v. *W.* [1905], 2 Ch. 349; 74 L. J. Ch. 687. On the death of one of them the property was liable to be sold and the proceeds divided as part of the partnership assets, unless the partnership articles provided for a different arrangement. There was generally a proviso in accordance with *Re Bourne* [1906], 2 Ch. 427; 75 L. J. Ch. 779, enabling the survivor to deal with the property and give receipts. As to valuations between partners: *Hordern* v. *H.* [1910], A. C. 465; 80 L. J. P. C. 15.

New form of conveyance to partners.

After 1925 it will be impossible to convey the land to the partners as tenants in common (L. P. Act, 1925, s. 34), and whether it is expressed to be conveyed to them as tenants in common or as joint tenants (*ib.*, s. 36) they, or the first four named, will hold in trust for sale; hence the proper form will be to convey to not more than four of them as joint tenants on trust for sale to give effect to the beneficial interests of the persons for the time being interested as in the text.

NOW THIS DEED WITNESSETH as follows:—

Conveyance to partners.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Partners out of partnership money to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Partners,

Parcels.

All, &c. (*see Forms in Sec. II, p.* 471, *et seq.*)

Habendum.

To hold unto the Partners in fee simple.

Trust to sell and hold proceeds as partnership property.

2. The Partners shall stand possessed of the premises hereby conveyed upon trust to sell the same with power at discretion to postpone any sale; And shall stand possessed of the net proceeds of sale (after payment of expenses) and of the net rents and profits until sale (after payment of rates, taxes, costs of insurance, repairs and other outgoings) In trust for the Partners and other persons (if any) who from time to time become entitled under any Partnership Articles or otherwise to the partnership assets and according to their respective shares or interests in those assets.

Additional powers.

3. All the powers (*continue as in clause* 3 *of last Precedent*).

[4 and 5. *Add acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480; *also Form No.* 8, *p.* 483, *if required.*]

In witness, &c.

No. IV.

CONVEYANCE *of* Freeholds *to a* Married Woman *who has* Purchased *the same out of her* Separate Property. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., Between A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D. (hereinafter called the Purchaser), the wife of E. D., of, &c., of the other part:

Recital of seisin and Agreement for sale.

Whereas (*Form No.* 1, *Sec.*, I, *p.* 452, *adding* "out of her separate property"):

NOW in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser out of her separate property to the Vendor (the receipt of which sum the Vendor hereby acknowledges) THIS DEED WITNESSETH as follows:—

Conveyance to married woman.

1. The Vendor, as Beneficial Owner, hereby conveys unto the Purchaser

Parcels.

All, &c. (*see Forms, Sec. II, pp.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple,(*h*) as her separate estate: Habendum.

[2 and 3. *Acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480. *Also Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.(*i*)

GROUP B.—CONVEYANCES TO GIVE EFFECT TO PURCHASES MADE OUT OF CAPITAL MONEY IN THE HANDS OF TRUSTEES OR IN COURT.

No. I.

CONVEYANCE *of* FREEHOLDS *so as to become* SETTLED LAND *where the* PURCHASE *is made out of* CAPITAL MONEY.(*a*) (*Legal Estate.*)

THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, Parties.

(*h*) The conveyance of freeholds to a married woman can be properly taken in this form, whether she was married before 1883 or since, and whether the separate money with which the purchase has been made has been acquired under the M. W. P. Act, 1882, or otherwise. It is no longer necessary to give her a general power of appointment. How conveyance to a married woman should be taken.

(*i*) A conveyance of registered land to co-owners will be by transfer in the ordinary form: L. R. R., 1925, Forms Nos. 19 and 20. If the purchasers are beneficially entitled in equal shares and are content with the statutory trusts and powers no other document need be executed. If they are trustees, or if the purchase money is unevenly contributed, or if they desire to create a beneficial joint tenancy or to introduce other special provisions of any kind, a separate deed should be executed, reciting the transfer and making the requisite provisions as in paras. 2 and 3 of Prec. I to III above, or otherwise as the case may require. If it is desired to enter restrictive covenants on the register they should be added to the registered transfer, adding at the end "and the transferees hereby apply for the entry of the foregoing restrictions." Registered land. General note to Group A, (Co-owners).

A conveyance of registered land to a married woman purchasing out of her separate property will be by transfer in the ordinary form (Nos. 19 or 20 in the Rules), but after the consideration the words "paid by the purchaser out of her separate property" may usefully be added to preserve evidence of the fact. Conveyances to married women.

(*a*) By the S. L. Act, 1925, s. 73, capital money arising under the Act is directed to be invested in (among other modes) the purchase of land in fee simple (which includes enfranchised land, ss. 74, 117 (1)), or leasehold land held for 60 years or more unexpired at the time of purchase. The investment is to be made according to the direction of the tenant for life (s. 75; *Re Coleridge* [1895], 2 Ch. 704), though the trustees are not bound to follow his direction if they have evidence that the investment is undesirable (*Re Hunt's S. E.* [1906], 2 Ch. 11; 75 L. J. Ch. 496). Though the court would not before 1926 sanction an investment which trustees would not otherwise be justified in making (*Re Gladwin* [1919], 1 Ch. 232; 88 L. J. Ch. 182; and see *Re Hotham* [1902], 2 Ch. 575; 71 L. J. Ch. 789), still under s. 98 Investment of capital money.

M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part and C. D., of, &c. (*the tenant for life*) (hereinafter called the Purchaser) of the 3rd part : WHEREAS :—

Principal vesting deed.

(1) By a Principal Vesting Deed (hereinafter called the Principal Deed), dated, &c. and made, &c., certain freehold lands at—— were vested in the Purchaser upon the trusts of a trust instrument of even date therewith [*or* upon the trusts of a settlement [will] therein mentioned] And as appears from [endorsements on] the principal deed the Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925 :

Seisin of Vendor and agreement for sale

(2) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described and has agreed to sell the same to the Purchaser at the price of £—— and he has directed the Trustees to pay the same out of capital money in their hands as such trustees as aforesaid :

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they are not liable for paying or applying capital money by the direction of the tenant for life or statutory owner for any authorised purpose, nor are they liable for the acts of his agents, and need not employ a separate agent. After 1925 the court has power under s. 64, if of opinion that the transaction will be for the benefit of the settled land or the persons interested under the settlement to authorise it to be carried out, save that the court is not to extend the range of authorised improvements. Where under an instrument money is in the hands of trustees and is liable to be laid out in the purchase of land to be made subject to that instrument, or if, under an instrument coming into operation after 1925, money or securities are held on trust creating entailed interests, then, in addition to such powers of dealing therewith as the trustees may have independently of the Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under the Act : s. 77. Personal estate held on trust with the land or settled by reference to " capital money " is applicable and is held as if it had been capital money arising under the Act : s. 78. Special arrangements are made by ss. 79 and 80 as respects capital money arising on the sale of a lease, reversion, or other interest less than the fee simple, or received as damages for a breach of covenant. In addition to the special (s. 98) indemnities, s. 97 provides that the trustees are not to be liable for adopting any contract for purchase made by the tenant for life, or bound to inquire into the propriety of the purchase, or be answerable for the conveyance of the land if it purports to convey the land in the proper mode.

Powers.

After 1925 notwithstanding anything in the settlement, any power (not being merely a power of revocation or appointment) relating to the settled land thereby conferred on the trustees or other persons, exercisable for any purpose, whether or not provided for in the Act, will be exercisable by the tenant for life of full age (if there is one) as an additional power, hence contracts will not be made by the trustees of the settlement for these relate to the settled land.

Form of conveyance.

The land acquired must be conveyed by a subsidiary vesting deed in accordance with s. 10, save that if there is no other land subject to the settlement, then it will be a principal vesting deed : *ib.* That section gives the statements and particulars which are requisite ; and see 1st Sch., Form No. 4.

Land to be held on trust for sale.

For the case of purchases of land by trustees to be held on trust for sale, see Group C, *infra*.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees by the direction (*b*) of the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,(*c*) Conveyance.

All those, &c. (see *Forms, Sec. II, p.* 471, *et seq.*), Parcels.

To hold unto the Purchaser in fee simple, Upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the freehold land therein comprised. Habendum.

2. The Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925. S. L. Act trustees.

[The following additional or larger powers are conferred by the said trust instrument in relation to the settled land and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. *Here set out the additional powers. This clause need not be used if the additional powers are set out in the principal deed unless being short it is desired to make the deed complete in itself. They must however be set out if there is no other land in settlement so that the purchase deed becomes a principal vesting deed.*] Additional powers.

3. The power of appointing a new trustee or new trustees of the settlement is vested in the Purchaser during his life [*or otherwise as the case may be. If no person is nominated to appoint trustees the following may be substituted*: "The statutory power Power to appoint trustees.

(*b*) This direction exonerates the trustees : S. L. Act, 1925, ss. 97-8. Direction to pay.

(*c*) This Prec. is taken from Form No. 4 in the 1st Sch. to that Act. On a purchase of a term of years absolute out of capital money, the term must (as in the case of freehold land or enfranchised land) be conveyed to the tenant for life, if any, of full age. If there is a minority the land will be conveyed to the personal representatives if they have not made a vesting assent to the S. L. Act trustees ; if the latter are acting the conveyance will be made to them : s. 26. If there is no tenant for life the conveyance will be made to the statutory owners under s. 23, who will in the majority of cases be the S. L. Act trustees. To whom land should be conveyed.

If enfranchised land is purchased the first recital will show whether the Vendor is seised subject to (1) the mineral, sporting and other rights of the lord not included in a compensation agreement, or (2) those rights and the manorial incidents, or (3) those rights and a compensation rentcharge in lieu of the manorial incidents. Whatever rights are left will be referred to in the habendum. If the manorial incidents have not been extinguished, the conveyance must be endorsed by the steward within six months from date. Variation for enfranchised land.

The acquisition of the land does not increase or multiply charges or powers of charging : S. L. Act, 1925, s. 10 (5). Multiplication of charges.

to appoint new trustees of the settlement is applicable, no person being nominated to exercise the power."]

[4 and 5. *Add acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480, *if required; also Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.(*d*)

No. II.

ASSIGNMENT *of* LEASEHOLDS *so as to become* SETTLED LAND, *where the* PRICE *is paid out of* CAPITAL MONEY.(*e*) (*Legal Estate.*)

Parties. THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (*tenant for life of full age*) (hereinafter called the Purchaser) of the 3rd part: WHEREAS:—

Lease to vendor. (1) By a Lease dated the —— day of —— (*Form No.* 28, *Sec. I, p.* 468, *supra*):

Principal vesting deed. (2) By a principal vesting deed (hereinafter called the principal deed), dated, &c., and made, &c., certain freehold [leasehold] property at ——, was vested in the Purchaser upon the trusts of a trust instrument of even date therewith [*or* upon the trusts of a settlement [will] therein mentioned] And as appears from [endorsements on] the principal deed the Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925:

Agreement for purchase. (3) The Purchaser, as such estate owner and trustee as aforesaid, has agreed with the Vendor for the purchase of the property comprised in the recited Lease for the residue of the term thereby granted free from incumbrances at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Assignment of leaseholds. 1. IN pursuance of the said agreement, &c. (*as in last Precedent*), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser,

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(*d*) As to registered land purchased with capital money, see general note at the end of this Group.

(*e*) See S. L. Act, 1925, s. 73 (1) (xi) (xii) (xiv). The term must have 60 years to run, unless the settlement authorises the acquisition of a shorter term; or the court gives leave to purchase a leasehold interest where the immediate reversion is settled land. The land must be conveyed to the tenant for life, not to the S. L. Act trustees. See note to last Prec. and s. 10.

Purchasers of registered land with capital money. Purchase of leaseholds under S. L. Act.

Parcels. ALL the premises comprised in and demised by the recited Lease,

Habendum. TO HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained, and henceforth on the part of the lessee to be paid, performed and observed, but upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the land therein comprised.(*f*)

S.L. Act trustees. 2. THE Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

[Additional powers.] [The following additional or larger powers conferred by the said trust instrument in relation to the settled land by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Here set out the additional powers. This clause need not be used if the additional powers are set out in the principal deed, unless, being short, it is desired to make the assignment complete in itself. They must however be set out if there is no other land in settlement, so that the purchase deed becomes a principal vesting deed.*]

Power to appoint trustees. 3. THE power of appointing a new trustee or new trustees of the settlement is vested in the Purchaser during his life [*or otherwise as the case may be. If no person is nominated to appoint trustees the following may be substituted*: "The statutory power to appoint new trustees of the settlement is applicable, no person being nominated to exercise the power."]

Covenant to pay rent, &c. 4. THE covenants (*g*) implied under section seventy-seven (1) (C) of the Law of Property Act, 1925, are incorporated in these presents.

Settlement of leaseholds and other personal estate to devolve with freeholds. (*f*) There is no longer anything to prevent leaseholds and other personal estate being settled so as to go exactly on the same trusts as freeholds for entailed interests can be created in personal estate: L. P. Act, 1925, s. 130. This removes the difficulties disclosed in *Re Angerstein* [1895], 2 Ch. 883; 65 L. J. Ch. 57. For the old form, see S. L. Act, 1882, s. 24 (2).

Position of tenant for life as regards leaseholds and his estate after his death. (*g*) The leaseholds being assigned to the tenant for life, he must covenant to pay rent, &c., if the vendor would be under a continuing liability under the covenants contained in the lease or in the assignment thereof. As to the right of trustees to have the covenants in the lease specifically performed whilst a tenant for life is in possession, see *Re Fowler* (1881), 16 Ch. D. 723; Withers on Reversions, 84; see also T. Act, 1925, ss. 26, 30; *Re McEacharn* [1911], 103 L. T. 900, as to insurance. A tenant for life of specifically bequeathed leaseholds is liable to pay rent, &c., during the continuance of his interest: *Re Gjers* [1899], 2 Ch. 54; 68 L. J. Ch. 442; and see *Re Copland* [1900], 1 Ch. 326; 69 L. J. Ch. 240; *Re Loom* [1910], 2 Ch. 230; 79 L. J. Ch. 704.

Acknowledgment and undertaking as to documents.

5 and 6. THE Vendor hereby acknowledges the right of the Purchaser [*Forms Nos.* 4 *and* 8, *Sec. III*, *pp.* 480, 483, *supra, if required*].

IN WITNESS, &c.

No. III.

CONVEYANCE *of a* FREEHOLD REVERSION *so as to become* SETTLED LAND, *where the* LEASEHOLD INTEREST *is already subject to the* TRUSTS *of the* SETTLEMENT *and the* PRICE *is paid out of* CAPITAL MONEY.(*h*) (*Legal Estate.*)

Parties.

THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (*tenant for life of full age*) (hereinafter called the Purchaser) of the 3rd part: WHEREAS:—

Lease.

(1) (*Form No.* 28, *Sec. I*, *p.* 468, *supra*):

Principal vesting deed relating to the lease.

(2) By a principal vesting deed (hereinafter called the principal deed), dated, &c., and made, &c., certain land including the premises comprised in the recited lease was vested in the Purchaser (as to the premises comprised in the said lease for the residue of the term thereby granted) upon the trusts of a trust instrument of even date therewith [*or* upon the trusts of a settlement [will] therein mentioned]; and as appears from [endorsements on] the principal deed the Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925:

Freehold reversion vested in Vendor.

(3) The Vendor is seised in fee simple free from incumbrances of the freehold reversion in the property comprised in the recited Lease immediately expectant upon the term thereby granted:

Agreement for sale.

(4) The Purchaser, as such estate owner and trustee as aforesaid, has agreed with the Vendor, for the purchase of the said reversion free from incumbrances at the price of £——:(*i*)

Right to indemnity.

After the death of a tenant for life, who acts as trustee of the land, his estate must be kept indemnified against a breach of covenant after his death. As to the trustees' right to indemnity out of the trust property for money expended in its preservation, see *Re Leslie* (1884), 23 Ch. D. 552; 52 L. J. Ch. 762; *Falcke* v. *Scottish Imperial Insurance Co.* (1887), 34 Ch. D. 234; 56 L. J. Ch. 707; *Re Earl of Winchilsea* (1889), 39 Ch. D. 168; 58 L. J. Ch. 20; T. Act, 1925, s. 30 (2). As to registered land, see general note at the end of this Group.

Registered land.

(*h*) See S. L. Act, 1925, s. 73 (1) (x).

Raising capital money.

(*i*) It had been held in *Re Bruce* [1905], 2 Ch. 372; 74 L. J. Ch. 578, that money might be raised under S. L. Act, 1882, s. 18, to purchase a freehold reversion, *i.e.*, that the word "enfranchisement" included the conversion of leaseholds into freeholds by the purchase of the reversion, but this will not be possible under S. L. Act, 1925, s. 71, for the word "enfranchisement" does not

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement, &c. (*continue as in Prec. I of this Group*), the Vendor, as Beneficial Owner, hereby conveys unto the Purchaser, Conveyance.

All those, &c. (*see Forms, Sec. II, p.* 471, *et seq.*), and all other (if any) the premises comprised in the recited Lease, Parcels.

To hold unto the Purchaser in fee simple, Habendum

To the intent that the term granted by the recited Lease shall forthwith merge and be extinguished in the fee simple of the said property, and so that the said freehold property shall be held upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the freehold land therein comprised.

[*The rest of this deed will be the same as in Prec. I of this Group.*]

In witness, &c.

No. IV.

CONVEYANCE *by* Trustees *for* Sale *so that the land may become subject to* Settlement, *where the* Purchase *is made by the* Statutory Owners *when there is no* Tenant *for* Life *of full age* (*j*) *out of* Capital Money. (*Legal Estate.*)

THIS SUBSIDIARY VESTING DEED is made, &c., Between A. B., of, &c., C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of the one part, and M., of, &c., and N., of, &c. Parties

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occur in that section; if such a transaction is desired an order must be obtained under s. 64.

In the case in the text, the lease will have been already noted as an incumbrance against the freehold title, and there will be no need to refer to it in the transfer. The notice will be cancelled and the leasehold title (if any) closed on satisfying the Registrar of the fact of the merger. For this purpose, it is usually sufficient to show that the lease and the freehold are registered in the name of or otherwise vested in the same person: L. R. Act, 1925, s. 46; L. R. R., 1925, r. 206. Registered land.

(*j*) Where an infant is solely and beneficially entitled to an estate in fee simple in possession or to a term of years absolute, or is solely and beneficially entitled for life, or there are two or more infants entitled for life (there being no tenant for life of full age jointly entitled with them) the case comes within S. L. Act, 1925, s. 26, and, unless the land is vested in personal representatives, the S. L. Act trustees have the powers of a tenant for life. If there is a tenant for life of full age jointly entitled with an infant, the former will be tenant for life: s. 19 (3). If two or more infants are jointly entitled to a legal estate (there being no joint tenant of full age) then s. 26 applies, and the trustees Cases where there is no tenant for life of full age.

(*statutory owners*) (hereinafter called the Purchasers), of the other part: WHEREAS:—

Will devising property to Vendors on trust for sale, death of testator and probate.

(1) and (2) X. Y., being at his death seised of the property hereinafter described [*recite the death and probate and continue with the Assent as in Form No.* 16, *Sec. I, p.* 460]

Principal vesting instrument under which the Purchasers are statutory owners.

(3) By a Principal Vesting Assent (hereinafter called the principal instrument), dated, &c., certain freehold lands at —— were vested in the Purchasers upon the trusts of the Will, dated, &c., of R. T., which was proved on the —— day of —— the said R. T., having died on, &c.; [*or* Upon the trusts of a Settlement, dated, &c., and made, &c.] And as appears from the principal instrument the Purchasers [*or* the Trustees] are the trustees of the settlement for the purposes of the Settled Land Act, 1925:

[*Or* By a Principal Vesting Deed (hereinafter called the principal instrument), dated, &c., and made, &c., certain freehold lands at —— were vested in the Purchasers Upon the trusts of a trust instrument of even date therewith] [*or* Upon the trusts of a Settlement, dated, &c., and made, &c.] And as appears [*continue as above*]:

Agreement for purchase.

(4) The Purchasers have agreed with the Vendors for the purchase of the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— out of capital money in the hands of the Purchasers [*or* the Trustees] as such trustees as aforesaid:

Conveyance.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchasers [*or* the Trustees] to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees, hereby convey unto the Purchasers,

Parcels.

ALL THOSE, &c. (*see Forms, Sec. II, p.* 471, *et seq.*),

Habendum.

TO HOLD unto the Purchasers in fee simple Upon and subject to the same trusts and powers as are declared by the principal instrument by reference as aforesaid with respect to the freehold land therein comprised.

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will act. But if an infant is jointly entitled to a legal estate with a person of full age, then there will be a trust for sale: L. P. Act, 1925, s. 19 (2).

Statutory owners.

Again under S. L. Act, 1925, s. 23, if there is no tenant for life (*e.g.*, by reason of the subsistence of a discretionary trust) the persons, if any, on whom the statutory powers are conferred by the settlement will have those powers.

Variation.

If no express powers are given then the S. L. Act trustees will have them.

Registered land.

If the statutory owners are not the trustees, then the statutory owners must be made the purchasers, and the trustees must also be joined to pay the purchase-money. As to registered land, see note at the end of this Group.

2. THE Purchasers are the trustees of the settlement for the purposes of the Settled Land Act, 1925. [*Or if the statutory owners are not the S. L. Act trustees, then in this clause substitute* "Trustees" *for* "Purchasers," *and add the trustees as separate parties.*] S. L. Act Trustees.

3. THE statutory power to appoint new trustees applies to the settlement and at the date hereof there is no person nominated to exercise the statutory power. [*This clause is drawn on the footing that the settlement provides that a tenant for life of full age shall have power to appoint new trustees, but that when the deed is executed the person entitled to the income is an infant. When a tenant for life attains full age a new vesting instrument must be executed: S. L. Act*, 1925, *s.* 7.] Power to appoint trustees.

[4 and 5. *Add acknowledgment for production of documents, Form No.* 4, *Sec. III, p.* 480, *and Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

No. V.

CONVEYANCE *making the land subject to a* COMPOUND SETTLEMENT,(*k*) *where the* PURCHASE *is made out of* CAPITAL MONEY. (*Legal Estate.*)

THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part,

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(*k*) Under S. L. Act, 1925, s. 31, the S. L. Act trustees of a settlement (made before or after 1st January 1926) become the trustees of any compound settlement "constituted by that instrument and any instruments subsequent in date or operation," save that if the court appoints trustees of a compound settlement (before or after 1st January, 1926) such appointment will prevail. This section will render unnecessary nearly all applications to the court for the appointment of such trustees, provided that there were S. L. Act trustees of the original settlement. For when once trustees have been constituted S. L. Act trustees of a settlement they and their successors in office remain trustees so long as the settlement is subsisting or deemed to be subsisting: s. 33 (1). A settlement is deemed to subsist so long as any limitation, charge or power of charging subsists or is capable of being exercised, or there is an infant who if of full age would be entitled to have the land vested in him for a legal estate. If a tenant in tail in remainder creates and sells a base fee and dies leaving issue inheritable to the entail, and then the tenant for life dies, the purchaser of the base fee would have the powers of a tenant for life: s. 20. The case is not within s. 104. If there are no family charges subsisting under the original settlement the trusteeship must cease for the reversion or right of reverter takes effect as if comprised in the conveyance creating the base fee, hence in this case the purchaser must apply for the appointment of trustees under s. 34.

A purchaser of the fee simple (before 1926) subject to family charges becomes (s. 21) a person having the powers of a tenant for life, but *ex hypothesi* the charges are on foot, thus the trustees, if any, remain S. L. Act trustees, hence

Trustees of compound settlements.

Purchaser of a base fee.

Purchaser of fee simple before 1926 subject to family charges

C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Seisin of Vendor.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described:

Principal vesting deed giving effect to a compound settlement.

(2) By a principal vesting deed (hereinafter called the principal deed), dated, &c., and made, &c., certain freehold lands were vested in the Purchaser Upon the trusts of the several documents mentioned in the First Schedule hereto (hereinafter referred to as the compound settlement) And by the principal deed the Trustees were stated to be the trustees of the compound settlement for the purposes of the Settled Land Act, 1925:

Agreement for sale.

(3) The Purchaser, as such estate owner and trustee as aforesaid, has agreed with the Vendor for the purchase of the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——, and has directed the Trustees to pay the said purchase-money out of capital money in their hands as trustees of the compound settlement:

Conveyance.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees by the direction of the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, as Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

ALL THOSE, &c. (*see Forms, Sec. II, p.* 471, *et seq.*),

Habendum.

TO HOLD unto the Purchaser in fee simple Upon and subject to the same trusts and powers as are declared by the principal deed by reference to the compound settlement as aforesaid with respect to the freehold land therein comprised.

S. L. Act trustees.

2. THE Trustees are the trustees of the compound settlement for the purposes of the Settled Land Act, 1925.

Power to appoint trustees.

3. THE statutory power to appoint a new trustee or new trustees of the settlement applies,(*l*) there being no person

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the purchaser would only have to apply under s. 34 if there were no trustees of the original settlement. As immediately before 1926 the land was not settled land, there is a question whether the Act (ss. 2, 3, 31) creates a compound settlement: s. 117 (1) (xxiv). After 1925 if a compound settlement subsists title must be made thereunder: S. L. Act, 1925, s. 1 (1), proviso: L. P. Act, 1925, s. 42.

Titles after 1925.

Appointment of new trustees for S. L. Act purposes.

(*l*) Before 1926 no express power in a settlement authorised the donee to appoint new trustees of a settlement appointed by the court, where the settlement itself did not appoint or constitute S. L. Act trustees; but where trustees have been expressed to be so appointed, their appointment is confirmed: T. Act, 1925, s. 64 (3). But after 1925 where S. L. Act trustees have been

nominated to appoint trustees of the Settlement of 18— mentioned in the First Schedule hereto.

[4 and 5. *Add acknowledgment and undertaking as to the documents in the Second Schedule, Form No.* 4, *Sec. III, p.* 480, *to the Purchaser, also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

THE FIRST SCHEDULE.

18— Settlement of this date made between, &c., whereby, &c.

19— Appointment of New Trustees of this date, made between, &c.

19— Charge of this date, made between, &c. (*charging the Settled Freeholds with certain jointures and portions*).

19— Disentailing Assurance of this date [duly enrolled (*m*)] and made between, &c.

19— Re-settlement of this date, made, &c.

19— Order of this date appointing the Trustees to be trustees for the purposes of the Settled Land Acts, 1882 to 1890, of the Compound Settlement consisting of the said Settlement of 18—, the Charge of 19—, the Disentailing Assurance of 19— and the Re-settlement.(*n*)]

THE SECOND SCHEDULE.

Particulars of documents retained in the custody of the Vendor.

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appointed (before or after 1st January, 1926) by the court the person nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, though no trustees for the purposes of the Acts were thereby appointed, will have power to appoint new or additional trustees of the settlement for the purposes of the Settled Land Act, 1925: T. Act, 1925, s. 64 (2) (*a*). Though "instrument" includes "instruments," a person who has power to appoint trustees of Settlement No. 2 cannot appoint new trustees of a compound settlement of which No. 2 is not the first instrument in date; for even if Settlement No. 1 had appointed S. L. Act trustees he would not have had power to appoint new trustees in their place. In default of an express donee the surviving or continuing trustees or the personal representatives of the last trustee can appoint: *ib.*, sub-s. 2 (*b*).

(*m*) No enrolment is required after 1925: L. P. Act, 1925, s. 133.

(*n*) In view of S. L. Act, 1925, ss. 31 and 33, such an order will seldom be required after 1925. It is assumed in this schedule that some family charge or power of charging is subsisting under the first settlement or the charge thereunder, and that the purchaser did not acquire his life interest under that settlement.

As to registered land, see note at end of this Group. Registered land.

No. VI.

CONVEYANCE *where the* PURCHASE-MONEY *has arisen from the* SALE *of* SETTLED LAND *which was on sale* RELEASED *from a* LEGAL MORTGAGE, *and where the* PURCHASED LAND *is made a* SUBSTITUTED SECURITY *for the* MORTGAGE DEBT.(*o*) (*Legal Estate.*)

Parties.

THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part, and E. F., of, &c. (*legal mortgagee*(*p*)) (hereinafter called the Mortgagee), of the 4th part: WHEREAS:—

Seisin of Vendor.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property described in the First Schedule hereto:

Mortgage of part of the estates subsequently settled.

(2) By a Mortgage dated the —— day of ——, and made between, &c., certain freehold property at —— was conveyed To the use of the Mortgagee in fee simple by way of mortgage for securing payment to him of the principal sum of £——, with interest thereon as therein mentioned:

Creation of mortgage term.

(3) By virtue of the Law of Property Act, 1925, a term of 3,000 years without impeachment for waste in the said property became vested in the Mortgagee subject to cesser on redemption under the recited Mortgage, and subject to the said term the fee

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Mode of carrying out transaction.

(*o*) This Precedent is given to show that under S. L. Act, 1925, s. 82, and L. P. Act, 1925, s. 69, a legal term can be reserved to a mortgagee with the like result as, before 1926, a legal estate could have been limited to the use of the mortgagee under the Statute of Uses. This method of carrying out the transaction is not generally recommended. The better course is to take a conveyance (Prec. I of this group) on the trusts of the settlement, and by a charge by way of legal mortgage of even date made under S. L. Act, 1925, ss. 69 and 82, charge the land with the mortgage debt by way of substituted security. See also s. 70 (as to varying the provisions of a mortgage, and giving an additional or consolidated security); s. 71 (as to raising money *de novo*); s. 49 (1) (*c*) (as to creating exclusive charges or exonerating land from a capital or annual sum without the consent of the mortgagee). See also as to the protection of mortgagees: *ib.*, s. 95; T. Act, 1925, s. 17.

Shifting or substituting securities.

Mortgage of life estate.

(*p*) Where the mortgagee's security only consists of the life interest the mortgage does not come on the title. A purchaser of the settled land is not concerned to see that the consent of the mortgagee has been obtained (S. L. Act, 1925, s. 104 (4), (5)); but the mortgagee has certain legal remedies (s. 111), and has certain rights as to the production and safe custody of documents: *ib.*

simple in that property became vested in the Purchaser upon the trusts of the settlement hereinafter referred to :

Principal vesting deed.

(4) By a Principal Vesting Deed (hereinafter called the Principal Deed), dated, &c., and made, &c., the property comprised in the recited Mortgage (with other properties) was stated to be vested in the Purchaser in fee simple (subject so far as affected thereby to the recited Mortgage) Upon the trusts of a Settlement, dated, &c., and made, &c. And as appears from [endorsements on] the principal deed the Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925 :

Sales with concurrence of Mortgagee.

(5) From time to time divers sales of parts of the property comprised in the recited Mortgage have been made by the Purchaser, and the Mortgagee concurred in such sales in consideration of the land to be purchased with the money arising from such sales being made a substituted security to him for his said mortgage debt :

Agreement for sale.

(6) The Purchaser, as such estate owner and trustee as aforesaid, has agreed with the Vendor for the purchase of the property described in the First Schedule hereto and the fee simple thereof in possession free from incumbrances at the price of £—— and has directed the Trustees, as such trustees as aforesaid, to pay the said purchase-money out of capital money in their hands arising from the aforesaid sales :

Mortgage debt still owing.

(7) The said principal sum of £—— is still owing to the Mortgagee on the security aforesaid and the Purchaser has accordingly agreed that a term of 3,000 years shall be reserved to the Mortgagee in manner hereinafter appearing :

NOW THIS DEED WITNESSETH as follows :—

Conveyance.

1. In pursuance of the said agreements and in consideration of the sum of £—— now paid to the Vendor by the Trustees by the direction of the Purchaser and with the consent of the Mortgagee (*q*) (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

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(*q*) If the mortgagee has a lien on the capital money arising from sales of part of his security, it seems that his consent should be obtained to its application by the trustees, such a lien can be imposed under S. L. Act, 1925, s. 69 or 70. Lien on capital money.

In the case of registered land the transaction should be effected by a transfer in the form given in the general note at the end of this Group (without any recital of the previous mortgage or releases) coupled with a charge in the usual form by way of substituted security. Registered land.

Parcels. ALL the property described in the First Schedule hereto and delineated on the plan drawn on these presents and thereon coloured ——

Reservation of mortgage term. RESERVING NEVERTHELESS out of the premises unto the Mortgagee a term of 3,000 years without impeachment of waste to commence from the date hereof, but subject to cesser on redemption by the Purchaser or his successors in title on payment of the principal money and interest secured by the recited Mortgage,

Habendum. TO HOLD (subject to the said term) unto the Purchaser in fee simple Upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the freehold land therein comprised.

S. L. Act trustees. 2. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Power to appoint trustees. 3. THE power of appointing a new trustee or new trustees of the settlement is vested in the Purchaser during his life.

Provisions of L. P. Act, 1925, to apply. 4. THE Purchaser and the Mortgagee hereby declare that the provisions of the Law of Property Act, 1925, shall apply to the substituted security hereby made, and that the legal right of redemption shall cease at the end of six months from the date hereof.

Acknowledgment and undertaking as to documents. 5. THE Vendor hereby acknowledges the right of the Mortgagee and the Purchaser to production of the documents mentioned in the Second Schedule hereto (*continue Form No.* 4, *p.* 480).

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of the property hereby conveyed.

THE SECOND SCHEDULE.

Particulars of documents retained in the custody of the Vendor.

No. VII.

CONVEYANCE *of* FREEHOLDS *to become subject to a* SETTLEMENT *where the* PRICE *is paid out of* CAPITAL MONEY IN COURT. (*Legal Estate.*)

Parties. THIS SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part,

C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees (*r*)), of the 3rd part : WHEREAS :—

Seisin of vendor.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described :

Principal vesting deed.

(2) By a principal vesting deed (hereinafter called the principal deed), dated, &c., and made, &c., certain freehold lands were vested in the Purchaser Upon the trusts of a Settlement, dated, &c. And as appears from [endorsements on] the principal deed, the Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925 :

Compulsory purchase of settled land and payment of purchase-money into court.

(3) In the year 19— certain other freehold lands then subject to the limitations of the Settlement referred to in the principal deed were acquired by the —— Company under the powers conferred by the —— Company's Act, 19—, which incorporates the Lands Clauses Consolidation Act, 1845, and the purchase-money arising from those hereditaments was paid into court to the credit of "*Ex parte*, &c." (*give the title of the account*),(*s*) and is now represented by £—— Consols :

Agreement for purchase.

(4) The Purchaser as such estate owner and trustee as aforesaid has (subject to the approval of the court) agreed with the Vendor for the purchase of the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— to be raised out of the said sum of Consols :

Order approving purchase, &c.

(5) By an Order (*t*) of the Chancery Division of the High Court of Justice made by the Honourable Mr. Justice —— on the —— day of —— in the said matter upon the petition

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(*r*) It is not essential that the trustees should execute, though it is convenient to express them to be parties.

Payment into court.

(*s*) See Lands C. Act, 1845, s. 69, which provides that the money shall be paid into court "*Ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), &c." After 1925 it will seldom be necessary to pay the compensation money into court: L. P. Act, 1925, s. 42 (7); L. P. (Amend.) Act, 1924, 9th Sched., para. 2.

(*t*) This Order follows the present practice. For another form of Order, see Seton, 7th ed., 1652. In that case the petition describes the property, and the Order approves the purchase, directs inquiries as to title, and orders the conveyance to be executed and the payment out of court of the purchase-money. For form of certificate, giving the result of the inquiries, see Daniell's Chancery Forms, 6th ed., Form No. 1222, p. 602. In the case of registered land, the fact of the purchase being made by order of the court does not affect the form of transfer.

[application (*u*)] of the Purchaser the Court being of opinion that the purchase of the property hereinafter described was a proper investment of the sum of £—— to be raised out of the said sum of Consols as therein mentioned and that a good title had been made to the said property and that a Subsidiary Vesting Deed (meaning these presents) and identified by the signature in the margin thereof of one of the Masters attached to the Chambers of the said Judge was a proper conveyance of the said property and that the Vendor was the proper person to execute the same and to receive the purchase-money it was ordered that upon the execution of this deed by the Vendor (such execution being verified by affidavit) the funds in court should be dealt with as directed in the payment schedule to the said Order of which the Schedule hereto is a copy and that the sum of £—— to be raised as mentioned in the said schedule should be paid to the Vendor :

NOW THIS DEED WITNESSETH as follows :—

Conveyance.

1. PURSUANT to the said Order and in consideration of the sum of £—— to be paid (*v*) to the Vendor as thereby directed (the receipt of which sum by the Vendor is intended to be endorsed hereon) the Vendor As Beneficial Owner, hereby conveys unto the Purchaser (*continue as in Prec. I of this group*).

IN WITNESS, &c.

THE SCHEDULE.

Particulars of the schedule to the Order hereinbefore recited.

(*To contain a copy of the payment schedule to the Order.*(*w*))

Application for payment out of court.

(*u*) See Lands C. Act, 1845, s. 70. The money is paid out of court on the petition of the person entitled to the rents and profits : see *Ex parte G. W. Ry.* [1909], 74 J. P. 21 ; and see Dart, 7th ed., 690, as to who are "the persons entitled." If the value of the money in court does not exceed £1,000 the application should be by way of summons : O. 55, r. 2. S. 69 of the Lands C. Act, 1845, authorises the money in court to be applied in the purchase of other lands to be conveyed to the same uses, &c. (now to be read as a direction that the land is to be conveyed to a person of full age upon the requisite trusts : L. P. Act, 1925, s. 1 (9)) ; as the land in respect of which the money was paid into court stood settled.

Direction to convey to uses, how, construed.

(*v*) The purchase-money is not paid out of court until the conveyance is executed. A receipt by the vendor should be indorsed on the conveyance after he has received the money.

(*w*) For form of schedule, see Seton, 7th ed., 219, Form 65.

General Notes on Group B as respects Registered Land.

Registered land, acquired with capital money.

Conveyances of registered land acquired with capital money under a settlement should, where there is a tenant for life of full age, be made by transfer in the special form, No. 24 in the Schedule to the L. R. R. 1925, which, as it has no recitals and is limited to the bare operative essentials of the transaction, is the same in almost all cases. It is as follows:—

Form of transfer.

District, Title No. , Property, (date) In consideration of —— pounds (£——) paid out of capital money arising under a Trust Deed, dated, &c., and made between, &c., &c., I, M. N., of, &c. (*Vendor*), hereby transfer to A. B., of, &c. (*Tenant for life*), the land comprised in the title above referred to And I the said A. B. hereby declare as follows: (*a*) the land is vested in me on the trusts from time to time affecting it, by virtue of the said trust deed; (*b*) E. F., of, &c., and G. H., of, &c., are the trustees of the Settlement; (*c*) [*if so*] The following powers relating to land are expressly conferred by the said trust deed in extension of those conferred by the Settled Land Act, 1925 (*fill in the powers, if any*); (*d*) I have the power to appoint new trustees of the Settlement And I apply for the entry of the following restrictions. No disposition under which capital money arises is to be registered unless the money is paid to the said E. F., and G. H., or into Court. Except under an order of the Registrar no disposition is to be registered unless authorised by the Settled Land Act, 1925, or under the additional powers (copy filed). [*If so provided in the Settlement add:-* No transfer of the mansion house shown on the attached plan (*or otherwise adequately described so as to enable it to be identified on the Land Registry General Map, Ordnance Map, or Filed Plan*), is to be registered without the consent of the said E. F., and G. H., or an Order of the Court.]

Purchases by statutory owners.

Where there is no tenant for life of full age and the purchase is made by the statutory owners under S. L. Act, 1925, s. 91, the transfer will be in the ordinary form (No. 19 in the Rules) and will not refer to the settlement; the restriction applied for will be that "Except under an order of the Registrar no disposition is to be registered unless authorised by the S. L. Act, 1925, or under the additional powers (copy filed)," see L. R. Act, 1925, s. 91, and Rule 102.

GROUP C.—CONVEYANCES TO GIVE EFFECT TO PURCHASES MADE BY TRUSTEES FOR SALE OF PERSONALTY SETTLEMENTS OR WILLS, WITH POWER, EXPRESS OR IMPLIED, TO PURCHASE LAND.

No. I.

CONVEYANCE OF FREEHOLDS *to* TRUSTEES *purchasing under a* POWER *contained in a* PERSONALTY SETTLEMENT *or under a* POWER *implied by law where the* TRUSTS *are kept off the title by a* TRUST FOR SALE. *Variation where power is contained in a* WILL.(*a*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and J. D. his wife (*the persons whose consent to the purchase is*

Implied power to purchase land.

When land should be conveyed on trust for sale.

Old Law.

(*a*) Under L. P. Act, 1925, s. 28, all money arising under a trust for sale of land can be laid out in the purchase of land which must then be conveyed on trust for sale: *ib.* This is the form applicable where trustees are purchasing under a power contained in a personalty settlement, or where the money represents the proceeds of sale of land formerly part of the settled property. Even where the settlement or Will does not expressly provide that it shall be conveyed on trust for sale this direction is supplied after 1911 by L. P. Act, 1925, s. 32. Apart from statute a power to vary securities may give a power of sale (*Re Gent* [1905], 1 Ch. 386; 74 L. J. Ch. 333); and a power to invest also implied a power of sale (*Re Pope* [1911], 2 Ch. 442; 80 L. J. Ch. 692); but a trust to retain or sell after 1925 creates a trust for sale with power to postpone: L. P. Act, 1925, s. 25 (4), confirming *Re Crips* [1907], 95 L. T. 865. It is conceived that *Re Hotchkys* (1886), 32 Ch. D. 408; 55 L. J. Ch. 546, will no longer be followed, for real and personal estate devolve in the same way on an intestacy and entailed interests can be created in personalty. It is the practice to provide in the settlement that the land may be purchased by the trustees at the request of the husband and wife and to direct that it shall be conveyed to the trustees upon trust for sale. This keeps the trusts of the settlement off the title, as the trusts declared by the settlement are only trusts of the *proceeds of sale*. Apart from such direction, provided that it is clear that the land when purchased is to be treated as personalty, the proper way to give effect to the intention of the settlement is to take a conveyance upon trust for sale.

Trusts of proceeds kept off the title by statute.

In any case a purchaser is not concerned with the trusts of the proceeds of sale whether disclosed or not, but the purchase-money must be paid to at least two trustees or to a trust corporation: *ib.*, s. 27.

In the case in the text the vendor is not concerned to see whether the trustees have power to purchase or not. He cannot call for the production of the settlement, and is not concerned if the purchase is in fact a breach of trust.

Survivorship of trust for sale and power to postpone.

There is no need to make a trust for sale of freeholds expressly exercisable by the representatives of a surviving trustee: T. Act, 1925, s. 18. A trust subsists until the land is conveyed by or under the direction of the persons interested in the proceeds of sale (L. P. Act, 1925, s. 23), a power to postpone for an indefinite period is conferred by s. 25; but the trustees for sale must so far as practicable give effect to the wishes of the majority (according to the value of their combined interests) of the persons interested in the proceeds of sale: *ib.*, s. 26 (3).

required by the Settlement), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described: Seisin of Vendor.

(2) The Trustees have at the request (*b*) of the said C. D. and J. D. (testified by their execution of these presents) agreed to purchase from the Vendor the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——: Agreement to purchase.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— paid by the Trustees to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, AS Beneficial Owner, hereby conveys unto the Trustees, Conveyance.

ALL THOSE, &c. (*see Forms, Sec. II, p.* 471, *et seq.*), Parcels.

TO HOLD unto the Trustees in fee simple. Habendum.

2. THE Trustees shall sell the said property or any part thereof with power to postpone any such sale and so that during the joint lives of the said C. D. and J. D. and the life of the survivor of them every sale be made only with their, his, or her consent in writing, and shall stand possessed of the net money to arise from sales under the trust for sale aforesaid, after payment thereout of all costs incidental thereto, and also of the net rents and profits of the premises until sale after payment of outgoings properly payable out of income Trust for sale. Trusts of proceeds of sale.

UPON the trusts and subject to the powers and provisions which, under a Settlement (*c*) dated the —— day of ——, and

(*b*) As to consents being sufficient if given by a separate instrument, *cf. Re Pope* [1911], 2 Ch. 442; 80 L. J. Ch. 692; but where they concern a purchaser they should in practice be given in the conveyance. See now as to consents: L. P. Act, 1925, s. 26. Consents.

(*c*) This does not bring the settlement on the title; even if it did the trusts would not concern a purchaser (L. P. Act, 1925, s. 27); but all capital money must be paid to not less than two individuals as trustees or to a trust corporation: *ib.* There must not be more than four trustees save where more than four have been appointed before 1926: T. Act, 1925, s. 34. The trusts of the proceeds of sale will not be brought on to the title unless, when the trust is wound up, the beneficiaries elect to take a conveyance of the land; even then a recital that they have become entitled will generally be sufficient; the conveyance for giving effect to the beneficial interests will be stamped 10s. and adjudicated. The conveyance cannot be made to the beneficiaries in undivided shares nor to more than four of them: L. P. Act, 1925, s. 3 (1) (ii). Even if the beneficiaries are entitled as joint tenants they will hold on trust for sale (*ib.*, s. 36), and the land must not be vested in more than four of them: T. Act, 1925, s. 34. Number of Trustees.

made between, &c. (being a Settlement made in consideration of the marriage then intended and afterwards solemnised between the said C. D. and J. D.), are declared and now subsisting with respect to money forming part of the [husband's *or* wife's, *as the case may be*] trust fund thereby settled.

[Variation where power to purchase is contained in a Will.]

[UPON the trusts and subject to the powers and provisions which under the Will, dated, &c., and proved on, &c., of the late X. Y., who died on, &c., are declared and now subsisting with respect to money forming part of the residuary estate of the said testator (*or* of the share settled by the said Will for the benefit of —— and her issue *or otherwise as required*).]

[Additional powers, if any, conferred by the Settlement or Will.]

3. ALL the powers which are by the Settled Land Act, 1925, or by section sixty-six of the Law of Property Act, 1925, made exercisable with the leave of the court are for the purposes of this deed exercisable at the discretion of the trustees without any order of the court, but during the joint lives of the said C. D. and J. D. and the life of the survivor of them all the statutory powers conferred on the trustees are exercisable with the like consents as are requisite on the execution of the foregoing trust for sale.(*d*)

Power to appoint new trustees.

4. THE said C. D. and J. D.(*e*) during their joint lives and the survivor of them shall have power to appoint a new trustee or new trustees of these presents, but every appointment of a trustee hereof shall be effected by a separate instrument from that appointing a trustee of the above-mentioned Settlement [Will].

Acknowledgment, &c.

5 and 6. THE Vendor hereby acknowledges the right of the trustees and each of them [*Form No.* 4, *Sec. III*, *p.* 480 ; *also Form No.* 8, *Sec. III*, *p.* 483, *if required*].

IN WITNESS, &c. (*f*)

Appointments of new trustees of conveyances on trust for sale.

(*d*) This power should correspond with the power in the settlement. The S. L. Act powers are conferred on all trustees for sale : L. P. Act, 1925, s. 28.

(*e*) The power must be made to correspond with that in the settlement or Will. Whenever a new trustee is appointed of the money settlement, he must (but by a separate deed in order to keep the settlement off the title) also be appointed a trustee of the above conveyance : T. Act, 1925, s. 35. If when the settlement was made there was a deed of even date conveying land on trust for sale, or if there have been several purchases under the power to purchase land, then as regards all the conveyances of land one deed of appointment will be sufficient : *ib.*

Variations in the case of a Will, or where the power to purchase is statutory.

Besides the variations in the text it is probable, in case the power to purchase is contained in a Will, or is conferred by L. P. Act, 1925, s. 28, that the trust for sale and the powers of management, as well as the power to purchase, can be exercised by the trustees without the consent of any beneficiary. If so, the references to C. D. and J. D. should be struck out.

Variations where the

(*f*) The precedents in this group can be readily adapted to enfranchised land. If there has been no compensation agreement or notice to ascertain the

No. II.

ASSIGNMENT *of* LEASEHOLDS *to* TRUSTEES *purchasing under a* POWER *contained in a* PERSONALTY SETTLEMENT *or under the* STATUTORY POWER *where the* TRUSTS *are kept off the title by a* TRUST *for* SALE.(*g*) (*Legal Estate.*)

THIS ASSIGNMENT is made, &c. (*Parties as in Prec. I of this Group*): WHEREAS:— Parties.

(1) By a Lease (*Form No.* 28, *Sec. I, p.* 468, *showing that the Lease is now vested in the Vendor*): Lease and mesne assignments.

(2) The Trustees have at the request of the said C. D. and J. D. (testified by their execution of these presents) agreed to purchase from the Vendor free from incumbrances the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £——: Agreement to purchase.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby assigns unto the Trustees, Assignment.

ALL the premises comprised in and demised by the recited Lease, Parcels.

TO HOLD unto the Trustees for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, performed and observed. Habendum.

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compensation the conveyance must be produced to the steward for endorsement within six months under L. P. Act, 1922, s. 129. The recital of seisin will show that the land is subject to manorial incidents and to the rights reserved to the lord; these will also be mentioned in the habendum. If the manorial incidents have been extinguished but the lord's rights to minerals and sporting rights have not been acquired these will similarly be referred to. If the manorial incidents have been extinguished and the lord's rights have been acquired the Precedent will take the same form as in the case of ordinary freeholds. If a compensation rentcharge has been created this will be mentioned in the habendum. land has been enfranchised.

As to registered land, see note at end of this Group. Registered land.

(*g*) See the notes to Prec. No. I of this Group. Whether or not the trusts are kept off the title the purchaser is not concerned therewith, but the money must be paid to at least two individuals as trustees or to a trust corporation: L. P. Act, 1925, s. 27. If the purchase is made under the statutory power (*ib.*, s. 28), it is probable that no consents will be required; if so then references to C. D. and J. D. will be struck out.

Covenant by Purchasers to pay rent, &c.

2. THE covenants implied (*h*) under section seventy-seven (1) (C) of the Law of Property Act, 1925, are incorporated in these presents.

Trust for sale and trusts of proceeds.

3. THE Trustees (*continue as in para.* 2 *of Prec. I of this Group*).

4, 5, 6 and 7 (*as in paras.* 3, 4, 5 *and* 6 of *Prec. I of this Group*).

IN WITNESS, &c.

No. III.

CONVEYANCE *to* TRUSTEES *purchasing under a* POWER *contained in a* WILL *or* PERSONALTY SETTLEMENT, *where the* TRUSTS *have been brought on the title, but by statute a purchaser will not be affected thereby.*(*i*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and J. D., his wife (*persons whose consent is required by the Will or Settlement*), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Purchasers), of the 3rd part: WHEREAS—

Seisin of Vendor.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described:

Will or Settlement under which the Purchasers have power to purchase.

(2) Under the Will, dated the —— day of —— and proved on the —— day of —— of X. Y., who died on the —— day of —— [a Settlement, dated the —— day of ——, and made, &c.], the Purchasers have power at the request in writing of the said C. D. and J. D. during their joint lives to invest money for the time being subject to the trusts of the said Will [Settlement] in the purchase of land to be held upon trust for

(*h*) As the trustees take the legal term they should give the implied covenant. If necessary they can obtain a separate indemnity from the beneficiaries.

Trusts brought on title.

(*i*) See notes to Prec. I of this Group, p. 674. Where adjoining land has been acquired and the trusts have been disclosed it will not be material after 1925, for whether or not a purchaser has notice he will not be concerned with them: L. P. Act, 1925, s. 27. Accordingly pursuant to s. 28 the land must be conveyed on trust for sale; the old-fashioned form of a conveyance upon the trusts of a personalty settlement or of a will must always be wrong after 1925. There will either be an express or implied (L. P. Act, 1925, ss. 28, 31, 32) trust for sale in which cases the land must be conveyed on trust for sale, or the land is held as realty, in which case there must be a subsidiary or principal vesting deed by which the land will be vested in the tenant for life as trustee, and S. L. Act trustees will be nominated.

No conveyance to be made on the trusts of a personalty settlement or will.

sale [by virtue of section twenty-eight [*or* thirty-one] [*or* thirty-two] of the Law of Property Act, 1925]:

(3) In exercise of the said power and at the request of the said C. D. and J. D. (testified by their execution of these presents) the Purchasers have agreed with the Vendor for the purchase of the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——: NOW &c. [*the rest of this Precedent will be the same as Prec. No. I of this Group ; indeed it may be better to make use of that Precedent altogether and omit the recital of the Will or Settlement*]. Agreement to purchase. Conveyance

IN WITNESS, &c.(*j*)

(*j*) If the power in a Will or Settlement to purchase land is defective and does not direct the land to be conveyed on trust for sale L. P. Act, 1925, s. 32 (confirming *Re Crips* [1907], 95 L. T. 865) supplies the necessary machinery. Defective power to purchase rectified.

If by the Limitation Acts or an order for foreclosure land (formerly mortgaged) becomes vested in trustees they will hold it on trust for sale (*ib.*, s. 31); but this section does not apply if the mortgage money was capital money for the purposes of the S. L. Act, 1925. Again if in a personalty settlement, including a Will coming into operation after 1911, there is a power to purchase land, the land when acquired must be conveyed on trust for sale: *ib.*, s. 32. A trust "either to retain or sell land" coming into operation after 1925 will be construed as a trust to sell with power to postpone: *ib.*, s. 25 (4). Any land purchased with money arising under an express or implied trust for sale of land must be conveyed on trust for sale: *ib.*, s. 28. On the other hand, if trustees purchase land in breach of trust though the land is held on an implied trust for sale, this would not authorise a re-purchase of land with the money arising from the sale of such land; the commission of one breach of trust when rectified by a sale does not authorise another breach of trust; still if land is purchased in breach of trust it should be conveyed on trust for sale. Implied trusts for sale. Trust to retain or sell. Purchase in breach of trust.

The Precedents in this Group are not applicable to the case of a power to purchase land contained in a Realty Settlement or Will or conferred by the S. L. Act, 1925, s. 73, in the case of realty settlements, where the land is limited on trust for a tenant for life with remainders over. In such a case the Precedents in Group B, p. 657, *et seq.*, should be used. A subsidiary vesting deed should also be used where the land is held upon trust for a person for life with remainder to trustees on trust for sale, for during the subsistence of the life interest the land is settled land; the future trust for sale merely constitutes S. L. Act trustees (*ib.*, s. 30); after the death of the tenant for life his personal representatives will in writing assent to its vesting in the trustees on trust for sale. Though the land ceases to be settled land on the death it is conceived that Ad. of E. Act, 1925, ss. 10 and 12, may, if convenient, be treated as applicable, and that representation could be granted to the trustees for sale. But if representation is in fact granted to the general executors of the tenant for life, this would not be void. Powers to purchase in Realty Settlements or Wills. Future trusts for sale.

The Precedents in this Group do not apply to registered land. Purchases by trustees for sale are effected in all cases by ordinary transfers (in Form 19 in the Rules) without recitals or other reference to the trusts. If desired, restrictions can be applied for to protect the consents of tenants for life, &c., where appropriate. Registered land. Purchases by trustees for sale.

SECTION III.—CONVEYANCES TO AND BY CORPORATIONS.

GROUP A.—CONVEYANCES TO AND BY COMPANIES.

No. I.

CONVEYANCE *by an* OWNER *in* FEE SIMPLE *to a* RAILWAY COMPANY.(*a*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the —— Railway Company (hereinafter called the Company), of the other part: WHEREAS:—

Vendor's seisin. (1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described:

Land is required by Company. (2) The Company require and are by the —— Railway Act, 19—, and the Acts incorporated therewith authorised to acquire and hold the said property for the purposes of the said Act of 19—:

Agreement to purchase (3) The Company have agreed with the Vendor for the purchase of the property hereinafter described and the fee simple thereof in possession free from incumbrances [together with the mines and minerals thereunder (*b*)] at the price of £——, which sum shall include (*c*) compensation for all damage to be sustained by the Vendor and the persons deriving title under him by reason of the severance of the property hereinafter described from his other lands or by reason of such other lands being injuriously affected by the execution of the powers conferred by the said Act, and also for all works which might otherwise be required to be made and maintained for the accommodation of such other lands [save and except the works mentioned in the second Schedule hereto]:

NOW THIS DEED WITNESSETH as follows:—

Conveyance. 1. IN pursuance of the said agreement and in consideration of the sum of £—— paid by the Company to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Company,

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(*a*) See notes to Precs. XIV and XV, Agreements for Sale, pp. 424-8, *supra*.

Minerals. (*b*) In a conveyance to a railway company the mines and minerals do not pass unless expressly mentioned: R. C. C. Act, 1845, s. 77.

Severance. (*c*) If a further sum is to be paid for severance, and is assessed separately, there should be a separate receipt for it; it will then be necessary to refer to it in the conveyance.

Payment into court. After 1925 the compensation money will seldom be paid into court: L. P. Act, 1925, s. 42 (7).

ALL THAT, &c. (*Form No.* 4, *Sec. II*, *p.* 473, *where the necessary additions, if mines and minerals are intended to pass, will be found*), Parcels.

TO HOLD unto the Company in fee simple.(*d*) Habendum.

[2. PROVIDED ALWAYS, that (*Form No.* 21, *Sec. II*, *p.* 477, *if required.*(*e*)] [Qualification of general words.]

[3. FOR the consideration aforesaid the Vendor hereby releases to the Company ALL such right of pre-emption, as but for this release, the Vendor and the other persons who would be entitled to under section one hundred and twenty-eight of the Lands Clauses Consolidation Act, 1845, in respect of the land hereby conveyed or any part thereof, in the event of the same being hereafter sold as superfluous land under the said Act.(*f*)] [Release of right of pre-emption.]

4. THE Vendor hereby acknowledges the right of the Company [*Form No.* 4, *Sec. III*, *p.* 480, *if required, as to documents in the First Schedule*]. Acknowledgment, &c.

[5. *Add Form No.* 8, *Sec. III*, *p.* 483, *if required.*]

[6. THE Company hereby covenants with the Vendor that the Company will make and for ever hereafter maintain, for the accommodation of the adjoining lands of the Vendor, the communications and works mentioned in the Second Schedule hereto.] [Covenant by Company as to accommodation works.]

IN WITNESS, &c.

THE [FIRST] SCHEDULE

Particulars of documents retained in the custody of the Vendor.

[THE SECOND SCHEDULE.]

[Particulars of accommodation works.]

(*d*) The words "according to the true intent and meaning of the said Act" are sometimes inserted here, but they are of no value, and had better be omitted.

In a conveyance to a corporation aggregate words of limitation are not necessary, as a corporation "never dies," and accordingly there can be no question of only a life estate passing: Co. Lit. 9b, 94b. S. 60 of the L. P. Act, 1925, does not apply to corporations aggregate, nor can they have "heirs," but for the purposes of the implied covenants for title it is expedient to use the words "in fee simple." Words of limitation.

(*e*) The above proviso should be inserted where it is considered important that the general words should be restricted to rights, &c., legally appurtenant to the land. General words.

(*f*) A right of pre-emption is an equitable interest (L. P. Act, 1925, s. 2 (3) (iv)) and a land charge can be registered to protect it: L. C. Act, 1925, s. 10, Class C, (iv). The doubt whether a right of pre-emption could be validly released so as to bind the successors in title or adjoining owners has been removed by L. P. Act, 1915, s. 186. A tenant for life, with the written consent of the trustees, is given power to release it (S. L. Act, 1925, s. 58 (2)); Release of rights of pre-emption.

No II.

CONVEYANCE *by an* INCUMBENT *to a* RAILWAY COMPANY, *where the* PURCHASE-MONEY *exceeds* £200.(*g*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN the Rev. A. B., Rector of the Rectory and Parish Church of ——, in the County of ——, Clerk in Holy Orders (hereinafter called the Vendor), of the one part, and the —— Railway Company (hereinafter called the Company) of the other part: WHEREAS:—

Vendor's title.

(1) The Vendor, as the present incumbent of the said Church and Rectory, is now entitled to the fee simple in possession

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it follows that trustees for sale (L. P. Act, 1925, s. 28); and personal representatives (Ad. of E. Act, 1925, s. 39), can give similar releases.

Registered land.

As to registered land, see note at the end of this section.

Power given by L. C. C. Act to convey.

(*g*) The Lands C. Act, 1845, s. 7, enabled corporations, tenants in tail or for life, and divers other limited owners enumerated therein to sell and convey to the promoters of the undertaking, and provided (s. 9) that in such cases the purchase-money (except where it was fixed by a jury, arbitration, or by a surveyor appointed by two justices under the provisions of the Act) must not be less than should be determined by two able practical surveyors, who were to be nominated by the parties, or, if they could not agree, by a third surveyor appointed by two justices, and (s. 69) must be paid into court, or (s. 71), if less than £200, to two trustees to be appointed by the persons entitled to the rents and profits or by persons on their behalf. If the purchase-money did not exceed £20 it was to be paid to the persons entitled to the rents and profits; see also s. 73.

Disabilities removed.

Under L. P. (Amend.) Act, 1924, 9th Sch., para. 2, the Lands Clauses Acts, and other statutes giving powers to make title in case of persons under disability take effect as if the references to the disabilities which have been removed had been omitted. Thus the statutory owners (S. L. Act, 1925, s. 26) will make title during a minority in cases to which that section applies and where there is no tenant for life under s. 23; where there is a tenant for life including a tenant in tail or other limited owner within s. 20, or an absolute owner subject to equitable interests created for money's worth within s. 21, he will make title. Similarly trustees, under an express or implied trust for sale will make title; also personal representatives will make title where the land is vested in them. The consideration may consist wholly or in part of fully paid securities of a company incorporated by a Special Act or by a Provisional Order, &c.: *ib.*, s. 39 (5). Special contracts may be made respecting support by minerals: *ib.*, s. 58 (3).

Consideration securities of a statutory company.

Support by minerals.

Sales in consideration of rent-charge.

Section 43 of the L. P. Act, 1922, so far as it enables glebe land to be sold in consideration of a rentcharge, &c., still remains on foot (5th Sch., S. L. Act, 1925), and will no doubt be dealt with by a "Measure."

Charitable ecclesiastical or public trusts.

The trustees of land held on or for charitable, ecclesiastical or public trusts or purposes are given the statutory powers of a tenant for life subject to the requisite consents or orders being obtained: S. L. Act, 1925, s. 29.

Title to be made without payment into court.

Though, as a rule, title will be made in such a way as to avoid payment into court (L. P. Act, 1925, s. 42 (7)); still, except in cases of disability where the disability has been removed, the modes of making title under the Lands Clauses Acts are saved: *ib.*, s. 7 (3) (*c*).

See Schedules A and B to the L. C. C. Act for statutory forms of conveyances.

free from incumbrances of the property hereinafter described, which form part of the garden (*h*) of the said Rectory:

Land required by the Company.

(2) The Company require and are by the —— Railway Act, 19—, and the Acts incorporated therewith (including the Lands Clauses Consolidation Act, 1845), authorised to acquire and hold the property hereinafter described for the purposes of the said Act of 19—:

Agreement for sale at sum determined by valuation.

(3) The Vendor, by virtue of the power for this purpose conferred by the said Act of 1845, has agreed to sell the fee simple of the property hereinafter described to the Company at the price of £—— (being the sum determined to be the value thereof by C. D., of, &c., and E. F., of, &c., two able practical surveyors nominated by the Vendor and the Company respectively, pursuant to the last-mentioned Act), and which sum is to include compensation for all damage to be sustained by him or his successors in title by reason of the severing of the property hereinafter described from the remainder of the other lands held with the said Rectory, or otherwise injuriously affecting such other lands by the execution of the powers of the said Act of 19— or any Act incorporated therewith:

Payment into court of purchase-money.

(4) The Company on the —— day of —— last paid into the Bank of England (as appears by the receipt of one of the cashiers of the said Bank) with the privity of His Majesty's Paymaster-General the sum of £——, being such purchase money as aforesaid, to the credit of "*Ex parte* The —— Railway Company, In the matter of the —— Railway Act, 19—, proceeds of sale of, &c., the account of the Rector of ——" as the Vendor hereby acknowledges.(*i*)

NOW THIS DEED WITNESSETH as follows:—

Conveyance

1. In pursuance of the said agreement and in consideration of the sum of £—— paid into court as aforesaid, the Vendor, As Trustee,(*j*) and in exercise of the power for this purpose conferred

Saving of Lands Clauses Act powers.

Estate of an incumbent.

(*h*) The Glebe Lands Act, 1888, does not authorise the sale of the rectory garden and certain other parts of the holding. It is assumed that it is cheaper to make title under the Lands Clauses Act than under the Ecclesiastical Leasing Acts. In the text the incumbent is treated as having the fee simple vested in him, as he can convey it, but formerly it was a moot point what the exact estate taken was. See now L. P. Act, 1925, s. 180; Ad. of E. Act, 1925, s. 3 (5).

Covenants for title on conveyance under Lands C. C. Act, 1845.

(*i*) The usual certificate of payment into court should be obtained by the company. The title must not, except in special cases, exceed thirty-six words, see Annual Practice, vol. II, S. Court Fund Rules, 1905, r. 103.

(*j*) Where sales are made under the Lands C. C. Act, 1845, by agreement, it is conceived that the same covenants for title should be given as on an ordinary

on him by the Lands Clauses Consolidation Act, 1845, hereby conveys unto the Company,

Parcels. ALL THAT, &c. (*Form No.* 4, *Sec. II*, *p.* 473, *supra*),

Habendum. TO HOLD unto the Company and their assigns in fee simple.

[2-4. *Add other clauses as in last Prec., if required, saying* " the Vendor and his successors " *in paragraph* 3.]

5. IT is hereby certified, &c. [*Form No.* 8, *Sec. III*, *p.* 483, *supra, if required.*]

IN WITNESS, &c.

Variation for Registered land. NOTE.—*In the case of registered land, see the General Note at the end of this section. Add, after the Consideration,* " *paid into the Bank of England to the credit of Ex parte,*" *&c., as in the above recital* (4) *to* " *hereby acknowledges.*"

No. III.

CONVEYANCE *by an* INCUMBENT *to a* RAILWAY COMPANY *where the* PURCHASE-MONEY *is* UNDER £200.(*k*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN the Rev. A. B., Rector of the Rectory and Parish Church of ——, in the County of ——, Clerk in Holy Orders (hereinafter called the Vendor), of the 1st part, A. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 2nd part, and the —— Railway Company

Recitals. (hereinafter called the Company), of the 3rd part : WHEREAS :—

(*Recitals as in last Precedent except as to the payment of purchase-money into court.*)

NOW THIS DEED WITNESSETH as follows :—

Nomination of Trustees 1. THE Vendor, with the approval of the Company, hereby nominates the Trustees to be the trustees to receive the purchase-money.

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sale. On the other hand, where there is a compulsory purchase, it would seem that the purchasers can only require a conveyance in the statutory form (with modifications consequential on the alteration in the law), see Sch. A to the Act, which contains no covenants for title : Frend and Ware, 2nd ed., 127 and 234, note (i). In the case given in the text the rector has really a less estate than a tenant for life, as he can be deprived of his living ; hence it is submitted that he should convey as trustee.

(*k*) See Lands C. C. Act, 1845, s. 71, and under the last Prec. It is assumed that the price exceeds £20.

Variation for registered land. The transfer should begin as follows : " I, A. B. (*the Incumbent*) in pursuance of s. 71 of the Lands Clauses Consolidation Act, 1845, and with the approval of (*the Company*) hereby nominate C. D. and E. F. (*the Trustees*) to be the Trustees to receive the purchase-money and in consideration of —— pounds (£)—

2. In consideration of the sum of £—— now paid by the Company to the Trustees (the receipt of which sum they hereby acknowledge), the Vendor, As Trustee (*continue as in last Prec. and add Form No.* 8, *Sec. III, p.* 483, *supra*). Conveyance to Company.

In witness, &c.

No. IV.

CONVEYANCE *by a* Tenant for Life *to a* Railway Company, *under the* Powers *of the* S. L. Act.(*l*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., Between A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 2nd part, and the —— Railway Company (hereinafter called the Company), of the 3rd part: Whereas:— Parties.

(1) By a Vesting Deed dated the —— day of ——, and made between (*continue as in Form No.* 10, *Sec. I, p.* 457): Vesting Deed.

(2) The Company require and are by the —— Railway Act, 19—, and the Acts incorporated therewith authorised to acquire and hold the property hereinafter described for the purposes of the said Act of 19—: Land required by Company.

(3) The Vendor, as such trustee and estate owner as aforesaid, has agreed to sell to the Company the property hereinafter described and the fee simple thereof in possession at the price of £——, which sum is to include compensation for the damage to be sustained by him and his successors in title, owners of the said lands, by reason of the severing of the said lands from the other lands comprised in the recited Vesting Deed, or otherwise injuriously affecting such other lands by the execution of the powers of the said Act of 19—: Agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Company by the direction of the Vendor to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, in exercise of the power for this purpose vested in him Conveyance.

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paid to them I hereby transfer," &c., as in Form 35 in the rules. The trustees should execute as well as the incumbent and company.

(*l*) See notes to Prec. II of this Group, p. 682.

by the Settled Land Act, 1925, and of all other powers, and As Trustee, hereby conveys unto the Company,

Parcels. ALL THAT, &c. (*Form No.* 4, *Sec. II*, *p.* 473, *supra*),

Habendum TO HOLD unto the Company in fee simple, discharged as provided by section seventy-two of the Settled Land Act, 1925.

[*Add other clauses as in Prec. I of this Group, if required.*]

IN WITNESS, &c.(*m*)

No. V.

DEED POLL *by* RAILWAY COMPANY *for the purpose of* VESTING *in themselves* COMMON LAND *free from* COMMONABLE AND OTHER RIGHTS.(*n*) (*Legal Estate.*)

THIS VESTING DEED is made by The —— Railway Company (hereinafter called the Company) this —— day of —— 19—: WHEREAS:—

Part of common is required for railway. (1) The Company require and are under the —— Railway Act and the Acts incorporated therewith (including the Lands Clauses Consolidation Act, 1845) authorised to acquire and hold the land described in the Schedule hereto, part of —— Common, in the Parish and Manor of ——, in the County of ——, for the purposes of the said Act of 19—:

Certain persons claim commonable rights. (2) A. B., of, &c., C. D. and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (hereinafter called the Committee), and divers other persons are or claim to be entitled to commonable and other rights on, over, or in respect of the said land:

(3)–(6) (*Recite purchase by Company of rights of lord, advertisement calling meeting, the holding of the meeting, and the resolution appointing a Committee, as in Prec. XVII of Agreements for Sale, p.* 430, *supra.*)

Agreement for compensation. (7) The Committee, on behalf of themselves and all other persons entitled to commonable and other rights as aforesaid, have agreed with the Company to accept the sum of £—— as compensation for the extinction of all such commonable and other rights, and the said sum of £—— has accordingly been paid

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Registered land. (*m*) In the case of registered land, the restrictions on the register must be complied with, and see the general note at the end of this section.

(*n*) See Lands C. Act, 1845, ss. 99-107; also notes to Prec. XVII, Agreements for Sale, p. 430, *supra*. The deed poll in the text takes effect under s. 107.

Commonable rights. Commonable rights held for an interest equivalent to an estate in fee simple or a term of years absolute are legal estates within L. P. Act, 1925, s. 1 (2) (*a*).

Deed poll where owner cannot be found, &c. For a deed poll vesting the land in the corporation where the owner cannot be found, &c., see Prec. IV of the next Group, p. 695, *infra*.

to the said Committee by the Company, as appears by an Agreement bearing even date herewith:

NOW THIS DEED WITNESSETH that in exercise of the power for this purpose conferred on them by the Lands Clauses Consolidation Act, 1845, the Company hereby declare that the land described in the Schedule hereto shall henceforth vest in the Company freed and discharged from all commonable and other rights, on, over or in respect of the same.

Declaration by Company vesting land in themselves free from commonable rights.

IN WITNESS, &c.(*o*)

THE SCHEDULE.

(*To contain particulars of the land acquired.*)

No. VI.

CONVEYANCE *by a* RAILWAY COMPANY *of* SUPERFLUOUS LANDS.(*p*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN the —— Railway

Parties.

(*o*) The provisions of the Lands C. Act, 1845, ss. 95-97, respecting the disposition of copyhold or customary lands are obsolete after 1925 (L. P. (Amend.) Act, 1924, 9th Sch., para. 6), for all copyhold land has been enfranchised by the L. P. Act, 1922. If the manorial incidents have not been extinguished the conveyance to the promoters of the undertaking must be sent to the steward for endorsement under s. 129; but usually arrangements will be made to extinguish these by a compensation agreement or by notice before the compulsory purchase is completed.

Provisions of Lands Clauses Act as respects copyholds.

In the case of registered land, the above Precedent can be used, as the estate conveyed is an "overriding interest," see L. R. Act, 1925, s. 70 (1) (*a*).

Registered land.

(*p*) With respect to lands acquired by the promoters of the undertaking which shall not be required for the purposes thereof, s. 127 of the Lands C. Act, 1845, provides that within the period prescribed by the special Act, or, if no period be prescribed, then within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters shall absolutely sell and dispose of such superfluous lands, and that in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Superfluous lands to be sold within ten years, or in default to vest in owners of adjoining lands.

Section 128 provides that before the promoters of the undertaking dispose of any such superfluous lands, they must, unless the lands be situated within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot, after diligent inquiry, be found, then the like offer must be made to the person or the several persons whose lands immediately adjoin the lands proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person is entitled to such right of pre-emption, the offer is to be made to such persons in succession in such order as the promoters think fit.

Right of pre-emption, &c., as to lands not in a town or built upon, &c.

Under s. 129 the right of pre-emption must be claimed within six weeks after the offer, and a declaration made before a justice by some disinterested

Right of pre-emption to be claimed within six weeks.

Company (hereinafter called the Company), of the one part, and A. B., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Conveyance to Railway Company.

(1) Under the powers of the —— Railway Act, 18—, the Company some time since purchased from X. Y., of, &c., certain lands, of which the lands hereinafter described form part, and the same were accordingly conveyed to the Company by a Conveyance dated the —— day of ——, and made between the said X. Y. of the one part and the Company of the other part:

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person (stating that the offer was made and refused, or not accepted within the six weeks; or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not, after diligent inquiry, be found, or were not capable of contracting) is made sufficient evidence of the facts therein stated.

Evidence of refusal, &c.

Fee simple liable to be divested.

But under L. P. Act, 1925, s. 186 (which is retrospective), it is now clear that rights of pre-emption are capable of release. Though land acquired under the Lands Clauses Act is liable when superfluous to vest in the adjoining owners, it can be held for a legal estate: L. P. Act, 1925, s. 7 (1).

Points decided as to superfluous lands.

The following points have been decided as respects superfluous lands:—

When it becomes superfluous.

(1) That the question whether land is to be deemed superfluous within the meaning of s. 127 must be determined at the expiration of the ten years. If it is not superfluous then, but becomes so afterwards, the section does not apply: *G. W. Ry. Co.* v. *May* (1874), L. R. 7 H. L. 283; 43 L. J. Q. B. 233.

(2) That land is superfluous if, at the end of the ten years, it is not then wanted for the purpose of the railway, and there are no purposes in connexion with the railway for which it can reasonably be expected that it will be wanted afterwards: *Hooper* v. *Bourne* (1880), 5 A. C. 1; 49 L. J. Q. B. 370; *Betts* v. *G. E. Ry.* (1878), 3 Ex. D. 182; aff. by H. L., 49 L. J. Ex. 197; 28 W. R. 50. As to what is sufficient evidence that the land has become superfluous, see *Hobbs* v. *Mid. Ry.* (1882), 20 Ch. D. 418; *Dunhill* v. *N. E. Ry.* [1896], 1 Ch. 121; 65 L. J. Ch. 178; it is a question of mixed law and fact: *Macfie* v. *Callander, &c. Ry. Co.* [1898], A. C. 270; 67 L. J. P. C. 58.

What sale is sufficient.

(3) That in order to prevent superfluous land from vesting in the adjoining owners, the sale must be absolute, without any reservation of an interest to the company: *L. & S. W. Ry. Co.* v. *Gomm* (1882), 20 Ch. D. 562; 51 L. J. Ch. 530. Where a railway company sold superfluous land with a covenant to resell certain portions to them, if required, it was held that the sale was void as regards those portions, but valid as to the remainder: *Ray* v. *Walker* [1892], 2 Q. B. 88; 61 L. J. Q. B. 718.

Rights of frontagers.

(4) That where there are several properties adjoining the superfluous land, it should be divided among the several owners in proportion to the frontage of each: *Moody* v. *Corbett* (1866), L. R. 1 Q. B. 510; 35 L. J. Q. B. 161; but compare *Smith* v. *S.* (1868), L. R. 3 Ex., at p. 287.

Land over a tunnel.

(5) That the surface over a tunnel is not superfluous land: *Re. Met. Ry. Co. and Cosh* (1880), 13 Ch. D. 607; 49 L. J. Ch. 277; *Mid. Ry. Co.* v. *Wright* [1901], 1 Ch., at p. 743; *Re Lancs. and Yorks. Ry. and E. of Derby* [1909], 100 L. T. 44.

Restrictive covenants.

(6) That a sale of superfluous land may be made subject to restrictive covenants as to user: *Re Higgins and Hitchman* (1882), 21 Ch. D. 95; 51 L. J. Ch. 772; but see *L. and S. W. Ry. Co.* v. *Gomm, supra.* And see generally the notes on these sections in Browne and Theobald, 4th ed., p. 243, *et seq.*

(2) The —— day of —— was the time limited by the said Act for the completion of the works thereby authorised: Day fixed for completion of works.

(3) The lands hereinafter described are not required for the purposes of the said Act: Land is not required by Company.

(4) The said X. Y. died (*q*) on the —— day of —— intestate, and Letters of Administration to his estate were granted on the —— day of —— 19— by the —— Probate Registry to J. Y. and R. Y.: Death of adjoining owner intestate.

(5) By an Assent in writing, dated, &c., the said J. Y. and R. Y. assented to the vesting of certain lands at —— (being the lands from which the property hereinafter described was severed and immediately adjoining that property) in C. Y., of, &c., and E. Y., of, &c. (hereinafter called the Adjoining Owners) in fee simple Upon trust to sell the same and stand possessed of the net proceeds and of the net rents and profits until sale In trust for the Adjoining Owners in equal shares: Assent on trust for sale in favour of the adjoining owners.

(6) N. O., of, &c., a person not interested in the matter in question, has made a declaration in writing, dated the —— day of ——, before P. Q., of, &c., a justice of the peace for the County of ——, not interested in the said matter, and has thereby declared that an offer to sell the property hereinafter described was duly made by the Company to the Adjoining Owners on the —— day of ——, and that such offer was not accepted by them or either of them within six weeks of making the same: Declaration of offer to sell to owners and non-acceptance.

(7) Since the date of the said declaration the Company have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——: Agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £——now paid by the Purchaser to the Company (the receipt, &c.), the Company hereby grants (*r*) unto the Purchaser Conveyance

(*q*) It is assumed that Z. Y. died after 1925 or that the assent was made after 1925, and that the administrators appropriated the land under Ad. of E. Act, 1925, s. 41, in or towards satisfaction of the shares of two of the statutory next of kin under ss. 46-47 or other persons interested, and made the assent under s. 36. As the land was not severed between the two next of kin it had to be held by them on trust for sale (L. P. Act, 1925, ss. 34-35); this would also have been the case had they taken as joint tenants beneficially: *ib.*, s. 36. The powers to appropriate and assent apply whether the testator or intestate dies before or after 1926. Statutory powers to appropriate and assent.

(*r*) By Lands C. Act, 1845, s. 132, it is provided that in conveyances of land by the promoters of the undertaking the word "grant" shall operate to Where "grant" operates as express covenants.

Parcels.

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*) [save and except all such mines and minerals under the said lands as by virtue of the Railways Clauses Consolidation Act, 1845, were excepted out of the conveyance of the said lands to the Company (*s*)]

Habendum.

TO HOLD unto the Purchaser in fee simple.

2. THE Company hereby acknowledge, &c. (*acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480, *supra*).

[3. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS whereof the Company have caused their common seal to be hereunto affixed, and the Purchaser has hereunto set his hand and seal the day and year first above written.

The common seal of the —— Railway Company was affixed to the above-written Conveyance in the presence of us :(*t*)

E. F. }
G. H. } Directors.
I. K., Secretary

No. VII.

CONVEYANCE *of* FREEHOLDS *belonging to a* LIMITED COMPANY *on a sale by the* LIQUIDATORS.(*u*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN the —— Company

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imply covenants for title and for further assurance. This is not affected by L. P. Act, 1925, s. 59 (2).

(*s*) This exception will be omitted if the company expressly purchased the mines and minerals.

Execution by corporations.

(*t*) As to the execution of deeds, &c., by or on behalf of corporations: L. P. Act, 1925, s. 74.

Registered land.

In the case of registered land, see the general note at the end of this section. The exception of mines, &c., can be inserted in the instrument of transfer. No recitals will be required, but the Registrar must be satisfied that the statutory requirements have been complied with.

Conveyance by liquidators.

(*u*) The Companies (Consolidation) Act, 1908, s. 186, authorises the liquidators in a voluntary winding-up to exercise, without the sanction of the court, all the powers conferred on the official liquidator by the same Act. Under s. 151 the official liquidator can, in England without the sanction of the court, sell the real and personal estate of the company, execute deeds, receipts, &c., and for that purpose use the company's seal. The court may however interfere in the exercise or proposed exercise of the powers given by this section, see sub-s. 3. The liquidation does not take the legal estate out of the company : *Re Oriental, &c. Co.* (1874), L. R. 9 Ch., at p. 560.

Fee simple terminating on dissolution of company.

The power for the liquidator to act on behalf of a company is saved by L. P. Act, 1925, s. 7 (3) (*c*).

Though a fee simple is liable to determine on the dissolution of a company it nevertheless remains a legal estate : L. P. Act, 1925, s. 7 (2). It can be re-created and vested by an order of the court : *ib.*, s. 181.

Limited, in liquidation (hereinafter called the Company), and A. B., of, &c., and C. D., of, &c., liquidators of the Company, (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Seisin of Company.

(1) At the date of the confirmation of the resolution hereinafter mentioned the lands hereinafter described were and still are vested in the Company in fee simple free from incumbrances:

Special resolution for winding-up and appointment of liquidators.

(2) By special resolution of the Company, duly passed and confirmed at extraordinary meetings held respectively on the —— day of —— and the —— day of ——, it was resolved that the Company be wound up voluntarily, and that the Vendors be and they were accordingly appointed liquidators for the purpose of such winding up:

Agreement for sale.

(3) The Vendors, on behalf of the Company, have agreed to sell the property hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as such liquidators as aforesaid (the receipt of which sum the Vendors and the Company hereby acknowledge), the Company, by the direction of the Vendors as such liquidators as aforesaid,(*v*) hereby [As Beneficial Owners] convey and the Vendors, As Trustees, hereby convey and confirm unto the Purchaser,

Habendum.

ALL, &c. (*see Forms in Sec. II., p.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple.

[2 and 3. *Acknowledgment as to documents, Form No.* 4, *Sec. III, p.* 480, *by the Vendors, and Form No.* 8, *p.* 483, *if required.*]

IN WITNESS whereof the Vendors, as such liquidators as aforesaid, have caused the common seal of the Company to be affixed to these presents, and the Vendors have hereunto set their hands and seals, the day and year first above written.(*w*)

(*v*) On a sale by liquidators it is usual to provide that covenants for title shall not be given. Apart from condition it is conceived that the company should convey as "beneficial owners."

Registered land.

(*w*) In the case of registered land, see the general note at the end of this section.

GROUP B.—CONVEYANCES TO AND BY LOCAL AUTHORITIES.

No. I.

CONVEYANCE *of* LAND *to a* LOCAL EDUCATION AUTHORITY *for a* SCHOOL. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the —— County Council (hereinafter called the Council) [*or* the Mayor, Aldermen, and Burgesses (*a*) of the Borough of ——, acting by the Council (hereinafter called the Corporation)] [*or* the Urban District Council of —— (hereinafter called the Council)] (*purchaser*) of the other part: WHEREAS:—

Vendor's seisin.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described:

Agreement by education authority to purchase land for school.

(2) The Council [the Corporation], acting as the local education authority and being desirous of acquiring the said property as a site for a school, have, under the powers conferred on them by the Education Act, 1921, agreed with the Vendor for the purchase thereof at the price of £——:

Conveyance.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Council [*or* Corporation] to the Vendor (the receipt of which sum the Vendor hereby acknowledges) (*b*), the Vendor, As Beneficial Owner, hereby conveys unto the Council [*or* Corporation],

ALL THAT, &c. (*see Forms in Sec. II, p.* 471, *et seq., supra*)

Habendum.

TO HOLD unto the Council [*or* Corporation] in fee simple.(*c*)

[2 and 3. *Acknowledgment, &c., as to documents, Form No.* 4, *Sec. III, p.* 480; *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

(*a*) The land must be conveyed to the corporation: *Re Leeds Institute* [1909], 1 Ch. 500; 78 L. J. Ch. 321.

(*b*) If the vendor is unable to convey (see Lands C. Act, 1845, s. 69), and if the purchase-money amounts to £200, this sum must be paid into court, unless the sale is made by a tenant for life or statutory owner under the powers of the S. L. Act, 1925, or by trustees for sale or personal representatives, all of whom have the statutory powers of a tenant for life. As to power to grant land for public and charitable purposes see S. L. Act, 1925, s. 55; and as to dedicating land for streets, open spaces, &c.: *ib.*, s. 56.

User for other than educational purposes.

(*c*) If such words as "for the purposes only of a school" are added, the purchasing authority can nevertheless, with the consent of the Board of Education and the approval of the Ministry of Health, use the land for

No. II.

CONVEYANCE *of* LAND *to a* PARISH COUNCIL *for a* RECREATION GROUND.(*d*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the Parish Council of ——, in the County of —— (hereinafter called the Council), of the other part: WHEREAS:— Parties.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described: Vendor's seisin.

(2) The Council, being desirous of providing a recreation ground for the said parish, have, with the consent of a parish meeting held on the —— day of ——, 19—, signified by a resolution passed at that meeting and with the consent also of the —— County Council, signified by an Order of the said Council dated the —— day of ——, 19—,(*e*) agreed with the Vendor to purchase the said property for the purpose aforesaid at the price of £——: Agreement by Parish Council with consent of parish meeting and County Council to purchase.

NOW THIS DEED WITNESSETH as follows:— Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Council to the Vendor

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other purposes: Education Act, 1921, s. 114. A gift of land under the School Sites Act, 1841, reverts to the donor if the purposes for which it was given fail: *A.-G.* v. *Shadwell* [1910], 1 Ch. 92; 79 L. J. Ch. 113. As to the application of the School Sites Acts to the Ed. Act, 1921, see *ib.*, s. 112.

Though an estate in fee simple is subject to a statutory right of reverter it nevertheless remains a legal estate: L. P. Act, 1925, s. 7 (1). Right of reverter.

Where the purchasing authority takes a conveyance with notice of restrictive covenants the covenantee cannot maintain an action for breach; his only remedy is compensation under the Lands C. Act, 1845, s. 68: *Kirby* v. *Harrogate School Board* [1896], 1 Ch. 437; 65 L. J. Ch. 376; and see *Long Eaton, &c., Co.* v. *Midland Ry.* [1902], 2 K. B. 574; 71 L. J. K. B. 837. The rule does not apply to covenants under a lease: *Piggott* v. *Middlesex C. C.* [1909], 1 Ch. 134; 77 L. J. Ch. 813. As to discharging or modifying restrictive covenants: L. P. Act, 1925, s. 84. Restrictive covenants.

(*d*) Local Gov. Act, 1894, s. 8 (*b*).

(*e*) It is assumed that the purchase-money will have to be raised by a loan. The Local Gov. Act, 1894, s. 11 (1), provides that the parish council may not, without the consent of a parish meeting, incur expenses involving a rate exceeding threepence in the pound or which will involve a loan, and (2) that the approval of the county council must be obtained where the parish council incur any expense which will involve a loan. S. 12 (2) authorises the county council to lend money to the parish council, without the sanction of the Local Government Board, for purchasing land, &c. As to gifts for the purpose of recreation grounds, see the Recreation Grounds Act, 1859. As to the transfer of recreation grounds from trustees to parish councils, see Local Gov. Act, 1894, s. 14; Open Spaces Act, 1906, s. 3. Loans to Parish Council.

(the receipt, &c.), the Vendor, As Beneficial Owner, hereby conveys unto the Council,

Parcels. ALL, &c. (*see Forms, Sec. II, p.* 471, *et seq., supra*),

Habendum. TO HOLD unto the Council in fee simple.

[2 and 3. *Acknowledgment, &c., as to documents, Form No.* 4, *Sec. III, p.* 480 ; *also Form No.* 8, *Sec. III, p.* 483, *if necessary.*]

IN WITNESS whereof the Vendor has hereunto set his hand and seal, and C. D., of, &c., the chairman presiding at a meeting of the said Parish Council, and E. F., of, &c., and G. H., of, &c., two other members of the said Parish Council, have, at the said meeting for and on behalf of the said Parish Council, set their hands and seals the day and year first above written.(*f*)

Signed, sealed, and delivered by the above-named A. B. in the presence of ——

Signed, sealed and delivered at a meeting of the said Parish Council held on the —— day of ——, 19—, by the above-named C. D., the chairman presiding at the said meeting, and the above-named E. F. and G. H., members of the said Council, in the presence of ——

Clerk to the said Parish Council.

No. III.

CONVEYANCE *of* FREEHOLDS *to a* COUNTY COUNCIL. (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the—— County Council (hereinafter called the Council) of the other part : WHEREAS :—

Seisin of Vendor. (1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described :

Power for Council to acquire the land. (2) The said property is required by the Council for the purposes of the —— County Council [General Powers] Act, 19—, and the Council are under that Act and the Acts incorporated therewith (including the Lands Clauses Consolidation Act, 1845) authorised to take and use the said property for the purposes aforesaid :

(*f*) Local Gov. Act, 1894, s. 3 (9).

Registered land. As to registered land, see the general note at the end of this section.

(3) The Council have agreed with the Vendor to purchase the said property for an estate in fee simple in possession free from incumbrances at the price of £——, which sum it was agreed should include compensation for severance, damages, or otherwise : Agreement for purchase.

NOW THIS DEED WITNESSETH as follows :— Conveyance.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Council to the Vendor (the receipt, &c.), the Vendor, As Beneficial Owner, hereby conveys unto the Council,

ALL THAT (*Form No.* 3, *Sec. II*, *p.* 472, *supra*), Parcels.

TO HOLD unto the Council and their assigns in fee simple. Habendum.

[2 and 3 *Add acknowledgment as to production of documents Form No.* 4, *Sec. III*, *p.* 480 ; *also Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

No. IV.

DEED POLL *by a* COUNTY COUNCIL *under the* LANDS CLAUSES CONSOLIDATION ACT, 1845, *where the* OWNER *of the* LAND *cannot be found.*(*g*) (*Legal Estate.*)

THIS VESTING DEED is made by the —— County Council (hereinafter called the Council) this — day of — : WHEREAS :—

(1) (*Recite title of X. so far as known*) : Recital of title.

(2) The Council require and are by the —— Act, 19—, and the Acts incorporated therewith (including the Lands Clauses Power for Council to acquire the land.

(*g*) See Lands C. Act, 1845, ss. 76, 77, which enable the promoters to acquire the land in the manner shown in the text. S. 76 applies to the following cases : (1) If the owner refuses to accept the purchase-money agreed or awarded ; (2) If the owner neglects or fails to make out a title to the property to the satisfaction of the promoters ; (3) If the owner refuses to convey ; or (4) If the owner is absent from the kingdom, or cannot after diligent inquiry be found, or fails to appear before a jury. A person who admits that he has no title to the land cannot be an " owner " within s. 76 ; he cannot fix the price adversely to the true owner : *Wells* v. *Chelmsford L. B.* (1880), 15 Ch. D. 108 ; 49 L. J. Ch. 827. The machinery of the two sections is as follows : (1) The purchase-money agreed or awarded must be paid into court to the credit of the parties interested in the property " describing them so far as the promoters can " : s. 76 (V.-C. Wood appears to have read the words in inverted commas as meaning that the persons were to be described, see *Douglass* v. *L. & N. W. Ry. Co.* (1857), 3 K. & J., at p. 179 ; and see *Wells* v. *Chelmsford L. B.*, *supra*) ; (2) Upon payment of the purchase-money into court a receipt is given to the promoters stating for what and for whose use the payment is made ; (3) The promoters may then execute a deed poll containing a description of the property in respect of which the deposit is made and declaring the circumstances under which and the names of the parties to Cases where promoters can vest the land in themselves by deed poll.

Consolidation Act, 1845) authorised to acquire the property described in the Schedule hereto for the purposes of the said Act of 19—:

That X. cannot be found.

(3) The said X. (if living) cannot, after diligent inquiry, be found, nor can the date of his death (if he is dead) be ascertained:

That Council not satisfied as to the persons entitled.

(4) It has not been shown to the satisfaction of the Council who is or are the person or persons interested in the property described in the Schedule hereto as personal representatives of the said X. (if he is dead) or as beneficially entitled under his will or intestacy (if any) or as otherwise deriving title under him:

Valuation of land.

(5) The sum of £—— has been determined by valuation in manner prescribed by the fifty-eighth and fifty-ninth sections of the said Act of 1845 to be the purchase-money payable by the Council for the purchase of the property described in the Schedule hereto:

Payment into court

(6) On the —— day of —— the Council pursuant to the seventy-sixth section of the Lands Clauses Consolidation Act, 1845, paid the sum of £—— into the Bank of England (as appears by the receipt of one of the cashiers of the said Bank) with the privity of His Majesty's Paymaster-General to the credit of "*Ex parte* the County Council of the Administrative County of——. The account of X. (if living) or his personal representatives or the persons beneficially deriving title under him, or other the persons interested in, &c." (*add short description of the land*):

Declaration by Council.

NOW THESE PRESENTS WITNESS that the Council, pursuant to the power for this purpose conferred on them by the

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whose credit the deposit is made; (4) The deed must be stamped as a conveyance on sale; and (5) Thereupon all the estate and interest in such property of the parties for whose use and in respect whereof the deposit is made vests absolutely in the promoters, and as against such parties the promoters are entitled to immediate possession. It will be seen that the credit account should be worded as widely as possible, see also s. 75.

As such a deed poll is executed solely under the statutory power and contains no covenants for title, the above course should only be resorted to where all other methods fail. If any persons are found with an interest which they are willing to convey they should be asked to do so and a deed poll should be executed as well, see Frend and Ware, 2nd ed., 252, note (a). Where a person refuses to treat, &c., all the steps taken, *e.g.*, notice to treat, notice to go before a jury, &c., should be recited in the deed poll. It saves trouble on payment out of court if full details are recited in the deed poll.

In the above cases the prudent course is always to have the purchase-money fixed under the provisions of the Act. If it is merely agreed it would seem that only the party to the agreement will be bound: *Ex parte Winder* (1877), 6 Ch. D. 696; 46 L. J. Ch. 572. The powers under which this Deed Poll is made are saved: L. P. Act, 1925, s. 7 (3) (c); see also note to 6th Sch., Epitome of Abstract No. 1.

seventy-seventh section of the Lands Clauses Consolidation Act, 1845, and of every other power enabling them, and to the intent to vest in themselves the fee simple in possession of the property hereinafter mentioned, hereby declare that the property in respect whereof the deposit in manner aforesaid of the said sum of £—— was made are the lands described in the Schedule hereto, and that such deposit was made to the credit of the said X. (if living) or his personal representatives or the persons beneficially deriving title under him under the circumstances hereinbefore appearing by reason of the said X. being unable to be found.

IN WITNESS, &c.

THE SCHEDULE.

(*To contain particulars of the land acquired, see Form No.* 3, *Sec. II, p.* 472, *supra.*) *In the case of registered land there should be a reference to the registered title.*

[NOTE.—*This precedent will apply to registered land, recital* (1) *being as follows: "Whereas X., of, &c., is the registered proprietor of the lands described in the Schedule hereto." After execution of the deed the Council should apply under Rule* 131 *to be registered as proprietors.*] Variation for registered land.

No. V.

CONVEYANCE *on* SALE *to a* MUNICIPAL CORPORATION *or an* URBAN DISTRICT COUNCIL *purchasing under the* PUBLIC HEALTH ACTS, 1875 to 1925, *or other* STATUTORY AUTHORITY. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the Mayor, Aldermen and Burgesses of the Borough of ——, acting by the Council as the Urban Sanitary Authority for the said Borough (hereinafter called the Corporation) [*or* the Urban District Council of ——, in the County of —— (hereinafter called the Council)] (*purchasers*) of the other part: WHEREAS:— Parties.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described: Vendor's seisin.

(2) The Corporation [*or* The Council] have under the powers of the Public Health Acts, 1875 to 1925, agreed with the Vendor to purchase the said property and the fee simple thereof in possession free from incumbrances for the purposes authorised by section — of the said Act at the price of £——: Agreement for purchase.

NOW THIS DEED WITNESSETH as follows :—

Conveyance.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Corporation [*or* the Council] to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Corporation [*or* the Council],

Parcels.

All that, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

To hold unto the Corporation [*or* the Council] in fee simple.

Provision that land not required may be used for other authorised purposes (*h*). [With certain exceptions.]

2. It is hereby declared, that if any part of the property hereby conveyed shall not be required for the purpose aforesaid, the same may by the direction or with the sanction of the Minister of Health be used for any other purpose for which the Corporation [*or* the Council] are or hereafter shall be authorised by statute to acquire land [*Add, if so agreed*, except that no part thereof shall be used as the site of a hospital for infectious diseases, or for any purpose or in any manner which may be a nuisance or annoyance to the Vendor or the persons deriving title under him as owner or owners of any property adjoining or near thereto without his or their consent in writing].

[3 and 4. *Acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480 ; *also Form No.* 8, *p.* 483, *if necessary.*]

In witness, &c.

No. VI.

CONVEYANCE *on sale by an* Urban District Council *under the powers of the* Private Street Works Act, 1892,(*i*) *where the* Owner *makes default in payment of his share of the expenses of the* Improvement. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., Between the Urban District Council of —— , in the County of —— (hereinafter

Registered land.

(*h*) See notes to Prec. XIX of Agreements for Sale, p. 434, *supra*. As to registered land, see the general note at the end of this section.

Sale under Private Street Works Act, 1892.

(*i*) This Act (which is to be construed as one with the Public Health Acts) enables an urban authority which has adopted it (see ss. 2 and 3) to execute improvement works in any private street, with a view to its being declared a highway repairable by the inhabitants at large, and to apportion the expenses among the several premises fronting, adjoining, or abutting on the street, see *Twickenham U. D. C.* v. *Munton* [1899], 2 Ch. 603 ; 68 L. J. Ch. 601. The share of expenses payable in respect of each property is charged on that property as from the date of the completion of the works ; if a local land charge has been registered under L. C. Act, 1925, s. 15, it will make no difference if the ownership has changed after service of the notice : *East Ham U. D. C.* v.

called the Council), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Resolution adopting Act.

(1) At a meeting of the Council held on the —— day of ——, 19—, it was resolved that the Council should adopt the Private Street Works Act, 1892, and that the same should come into operation within the district at the end of one month after the publication of the advertisement of the resolution, and the said resolution was duly published by advertisement and otherwise as required by the said Act :(*j*)

Resolution to execute works.

(2) At a meeting of the Council held on the —— day of ——, 19—, it was resolved to sewer, level, pave, flag and channel a certain private street, known as ——, under the provisions of the said Act:

Aylett [1905], 2 K. B. 22; 74 L. J. K. B. 471. The urban authority have (under s. 13 of the Act, for the recovery of that sum and interest) all the powers and remedies of the L. P. Act, 1925, as if they were mortgagees having powers of sale and leasing and of appointing a receiver.

Registration of local land charges.

Before the charge actually attaches the rights of the local authority can be protected by the registration of a "general" local land charge under L. C. Act, 1925, s. 15 (4); within one year after the charge is ascertained this will be converted into a specific local land charge to be registered as of the date of the general charge unless in the meantime the charge has been satisfied. The P. H. Act, 1923, s. 335, does not authorise the frontager's charge to be increased.

Charge for share of expenses is on the fee simple.

The charge is on the premises, and not on any particular estate or interest therein: *Corpn. of Birmingham* v. *Baker* (1881), 17 Ch. D. 782; *Re Pizzi* [1907], 1 Ch. 67; 76 L. J. Ch. 87; *semble*, that the sale should be of the fee simple, even though the present owner, as defined by s. 4 of the P. H. Act, 1875 (which definition is incorporated by s. 5 of the Private Street Works Act, 1892), may have only a leasehold interest.

Rights as between lessor and lessee.

As between a lessor and a lessee who covenanted in his lease to pay all rates, taxes, outgoings, &c., the lessee is liable for the cost of paving works: *Greaves* v. *Whitmarsh* [1906], 2 K. B. 340; 75 L. J. K. B. 633. But if the property is subject to a restrictive covenant entered into with the owner of adjoining property, the sale will be subject to such covenant: *Guardians of Tendring Union* v. *Dowton* [1891], 3 Ch. 265; 61 L. J. Ch. 82: provided that, if the covenant is made after 1925, a land charge has been registered to protect it.

The title to be shown by authority selling.

(*j*) With regard to the title: the council should furnish to the purchaser an abstract of title setting out the resolutions and facts recited in the above Prec.; the same should be verified as to the facts generally by the statutory declaration of the clerk, and as to the resolutions by the production of the minute-book: P. H. Act, 1875, Sch. I, r. 10. For form of declaration see next Prec.

Persons to be served.

Evidence must also be furnished that the person on whom the notices required by the Act were served was "the owner" at the time of such service. If the property was in the occupation of a tenant at rack-rent, it will be sufficient to prove that the person so served was in actual receipt of the rent, and no further proof of his title can be required. If the property was vacant, it will be necessary to show that the person served as owner would have been entitled to the rack-rent, had it been let at a rack-rent, which would involve some evidence of title, see P. H. Act, 1875, s. 4, under definition of "owner." In the case of property incapable by law of being let at a rack-rent, *e.g.*, a

That A. B. is owner of property abutting on street.

(3) The property hereinafter described fronts to and abuts on the said street, and at the date of the last-mentioned resolution A. B., of, &c., was the owner of the property within the meaning of the said Act:

Approval of specifications, &c.

(4) A specification of the works referred to in the said resolution with plans and sections thereof, an estimate of the probable expenses of the works, and a provisional apportionment of the estimated expenses among the properties liable to be charged therewith under the said Act (including the property hereinafter described) were prepared by X. Y., the surveyor of the Council, submitted by him to the Council, and the same were approved by the Council by a resolution passed at a meeting held on the —— day of ——, 19—:

Publication of resolution and service on owners.

(5) The last-mentioned resolution was published in the manner prescribed in Part II (*k*) of the said Act, and copies thereof were served on the owners of the properties shown as liable to be charged in the provisional apportionment (including the said A. B.) within seven days after the date of the first publication:

Deposit of specification, &c., at office for inspection.

(6) During one month from the date of the first publication(*l*) of the last-mentioned resolution [copies certified by the Council's surveyor of] the approved specification, plans, sections, estimate and provisional apportionment were kept deposited at the Council's offices, and were open to inspection at all reasonable times, and during the said month no objection was made to the proposals of the Council under section seven of the said Act:(*m*)

Final apportionment.

(7) The said works having been completed and the expenses thereof ascertained, the surveyor of the Council made a final

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church, provided it is exclusively appropriated to public worship: *Walton-le-Dale, etc., Council* v. *Greenwood* [1911], 105 L. T. 546; or a burial ground, there can be no owner, hence no charge under the Act; see *Hornsey D. C.* v. *Smith* [1897], 1 Ch. 843; 66 L. J. Ch. 476; see also *L. C. C.* v. *Wandsworth Borough Council* [1903], 1 K. B. 797; 72 L. J. K. B. 399; *Hampstead Corpn.* v. *Mid. Ry. Co.* [1905], 1 K. B. 538; 74 L. J. K. B. 431.

Disputes.

If the validity of the charge on the property is disputed by any person interested, the council should institute an action in the High Court, asking that the sum claimed to be due may be declared to be a charge on the property, and for a sale, see *West Ham Corpn.* v. *Sharp* [1907], 1 K. B. 445; 76 L. J. K. B. 307.

(*k*) *I.e.*, once in each of two successive weeks in a local newspaper and in or near the street to which the resolution relates at least once in each of three successive weeks, see Schedule to Act, Part II.

(*l*) See s. 6 (3).

(*m*) This section gives the owner power to object on the grounds therein mentioned.

apportionment dated the —— day of ——, 19—, by dividing the expenses in the same proportion in which the same were divided in the provisional apportionment, and the sum charged by the final apportionment on the property hereinafter described was £—— :

Service of notice thereof on owners.

(8) A notice in writing of the final apportionment was served on the owners of the property affected thereby as required by the said Act, and in particular such notice was served on the said A. B. on the —— day of ——, 19— :

No objection made.

(9) No objection was made to the final apportionment by the owner of any property charged with any expenses thereunder :(*n*)

That whole of sum remains unpaid.

(10) The whole of the said sum of £——, charged as aforesaid on the property hereinafter described still remains unpaid with interest thereon at the rate of £4 per cent. per annum from the date of the said final apportionment :

Agreement for sale

(11) Under the power of sale conferred on the Council for the recovery of the said sum and interest by the joint operation of section thirteen of the said Act and of sections eighty-eight and one hundred and one of the Law of Property Act, 1925, (*o*) the Council have agreed to sell to the Purchaser the fee simple of the property hereinafter described free from incumbrances at the price of £—— :

NOW THIS DEED WITNESSETH as follows :—

Conveyance.

1. In pursuance of the said Acts and of the said agreement, and in consideration of the sum of £—— now paid by the Purchaser to the account of the Council at the —— Bank (the receipt whereof the Council hereby acknowledge) [*or* paid by the Purchaser to the treasurer of the Council as appears by the receipt of the said treasurer indorsed hereon, and which payment the Council hereby acknowledge], the Council, As Mortgagees, hereby convey unto the Purchaser,

Parcels.

All, &c. (*see Forms in Sec. II, pp.* 471, *et seq.*),

To hold unto the Purchaser in fee simple.

Regulations as to exercise of power.

(*n*) See s. 12 as to objections within one month of notice of the final apportionment.

(*o*) It is conceived that for the purposes of L. P. Act, 1925, s. 101, the ' mortgage money " will be deemed to have become due at the date of the final apportionment or at the expiration of one month from that date. But before selling, the council must give the notice required by s. 103 of the same Act, and the sale must not be made until the expiration of three months after such notice : *Barker* v. *Illingworth* [1908], 2 Ch. 20 ; 77 L. J. Ch. 581. The purchaser, however, is not bound to see to this : *ib.*, s. 104 (2).

Acknowledgment and undertaking as to minute-book.

2. THE Council hereby acknowledge the right of the Purchaser to production and delivery of copies of the minute-books of the Council so far as they record the resolutions hereinbefore recited, and hereby undertake for the safe custody thereof.

IN WITNESS, &c.(*p*)

No. VII.

STATUTORY DECLARATION *of the* CLERK *to the* URBAN DISTRICT COUNCIL *to accompany the last* PRECEDENT. (*Legal Estate Evidence.*)

I, N. O., of, &c. (*Clerk of the Council*), do solemnly and sincerely declare as follows :—

Declarant is Clerk to Council.

1. I AM the duly appointed Clerk to the Urban District Council of ——, in the County of ——, and I have the custody of the books of the said Council.

Passing of the resolutions.

2. I WAS present at a meeting of the said Council, held on the —— day of ——, 19—, when the following resolution was passed (*set out resolution adopting Private Street Works Act*, 1892).

3. I WAS present, &c. (*as above, setting out resolution to do works in —— Street*).

4. I WAS present, &c. (*as above, setting out resolution adopting specification and plans, &c., prepared by surveyor*).

Publication.

5. THE last-mentioned resolution was published in the manner prescribed in Part II of the said Act, and copies thereof were served on all the owners of the properties shown as liable to be charged in the said provisional apportionment.

Land charged.

6. THE properties shown as liable to be charged included a messuage and premises abutting on the said street, and described as, &c. (*describe premises*).

Service of notice of resolution.

7. AT the date of the provisional apportionment A. B., of, &c., was the person receiving the rack-rent of the property, and a copy of the said resolution was served on him by a prepaid letter posted on the —— day of —— and addressed to, &c. (*state address*).

Deposit of plans, &c.

8. THE said specification, plans, sections, estimate and provisional apportionment [*or* copies certified by the Council's surveyor of the said specification, &c.] were kept deposited at

Registered land.

(*p*) This Precedent will apply to registered land. But as the purchaser will have to apply afterwards for registration as proprietor, it will be advisable to have the conveyance settled by the Registrar and the evidence (detailed in Note (*j*) above) accepted as sufficient by him before parting with the purchase-money, see L. R. Act, 1925, s. 89, and r. 237.

the Council's offices for one month, namely, from the —— day of —— to the —— day of —— 19—, and were open for inspection at all reasonable times. During the said month no objection was made thereto under section seven of the said Act.

Final apportionment.

9. THE final apportionment of the said expenses was made by the said surveyor on the —— day of ——, and the sum charged thereby on the property was £——.

Service of notice of final apportionment.

10. AT the date of the completion of the works, and also at the date of the said final apportionment, the said A. B., was still in receipt of the rack-rent of the said property, and a notice in writing of the said final apportionment was served on him by a prepaid letter posted on the —— day of —— and addressed to, &c. (*state address*).

11. NO objection was made to the said final apportionment under section twelve of the said Act.

Notice to owner requiring payment.

12. ON the —— day of ——, 19—, I, on behalf of the said Council, served on the said A. B., a notice in writing requiring immediate payment of the said sum of £—— with interest thereon at the rate of £4 per cent. per annum from the date of the said final apportionment. Such notice was served by, &c. (*state mode of service*).

Default.

13. No part of the said sum of £—— has been paid to the said Council, and the same with interest thereon still remains owing.

14. I WAS present at, &c. (*meeting of Council when resolution was passed to put up the property by public auction*).

Sale.

15. THE said property was accordingly, &c. (*state sale by auction, and that C. D., as highest bidder, was declared purchaser*).

Resolution to affix seal to conveyance.

16. I WAS present at a meeting of the said Council held on the —— day of ——, 19—, when it was resolved that the common seal of the said Council be affixed to the deed of conveyance to the said C. D. then produced, and the common seal was accordingly affixed thereto at the said meeting in my presence

AND I make, &c.

No. VIII.

CONVEYANCE *on* SALE *to the* GUARDIANS *of the* POOR *for* POOR LAW PURPOSES.(*q*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the

(*q*) See the Union and Parish Property Act, 1835 (5 & 6 Will. 4, c. 69). So much of s. 6 of that Act as relates to the transmission to the Poor Law

Guardians of the Poor of the —— Union, in the County of —— (hereinafter called the Guardians) (*purchasers*), of the other part: WHEREAS:—

Vendor's seisin. (1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described:

Agreement to purchase by Guardians (2) Under the power for that purpose contained in the Union and Parish Property Act, 1835, the Guardians agreed with the Vendor to purchase the said property as a site for (*state purpose*) at the price of £——, subject to the approval of the Minister of Health:

Approval of Minister of Health. (3) The said purchase has been approved by an Order of the Minister of Health dated the —— day of ——, 19—:

NOW THIS DEED WITNESSETH as follows:—

Conveyance. 1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Guardians to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Guardians,

Parcels. ALL THAT, &c. (*see Forms in Sec. II, p.* 471, *et seq., supra*),

Habendum. TO HOLD unto the Guardians in fee simple.

[2 and 3. *Add acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

Commissioners, and the approval, sealing, and registration by them of deeds, is repealed by the Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58), hence the form in the Schedule to the first-mentioned Act is no longer in force. In rural parishes the powers of sale are now vested in the parish council: Local Government Act, 1894, s. 6. Where a board of guardians has been dissolved (see *Local Gov. Bd.* v. *S. Stoneham Union* [1909], A. C. 57; 78 L. J. K. B. 124) or amalgamated, its property and liabilities are vested automatically in its successors: Poor Law Authorities (Transfer of Property) Act, 1904. This deed does not require enrolment, see Mortmain, &c., Act, 1892.

By s. 49 of the Poor Law Amendment Act, 1834, any contract entered into by or on behalf of any parish or union relating to the maintenance, &c., of the poor, or for any other purpose relating thereto, which is not in conformity with the rules, &c., of the Poor Law Commissioners or otherwise sanctioned by them is void. Instruments made pursuant to that Act are free from stamp duty · s. 86. The Local Government Board superseded the Poor Law Commissioners by virtue of the Poor Law Board Act, 1847, and the Local Government Board Act, 1871, and have in turn been superseded by the Ministry of Health.

Corporation. Section 7 of the Union and Parish Property Act, 1835, makes the guardians of the poor a corporation aggregate.

Section 2 of the Poor Law Act, 1889, provides for the borrowing of money for permanent works or objects, and s. 1 of the Poor Law Act, 1897, provides for

No. IX.

CONVEYANCE *of* FREEHOLDS *by* GUARDIANS OF THE POOR *under the* UNION AND PARISH PROPERTY ACT, 1835, *the* SALE OF EXHAUSTED PARISH LAND ACT, 1876, *and an* ORDER *of the* MINISTER OF HEALTH.(*r*) (*Legal Estate.*)

THIS CONVEYANCE,(*s*) made the —— day of —— in the year —— by virtue of the Union and Parish Property Act, 1835, the Sale of Exhausted Parish Land Act, 1876, and in pursuance of an Order dated the —— day of —— of the Minister of Health,(*t*) WITNESSETH that the Guardians of the Poor of the —— Union in consideration of the sum of £—— paid to the Treasurer of the said Guardians by A. B., of —— in the County of ——, As Trustees, do hereby grant and convey

Conveyance.

ALL THAT piece of land containing —a. —r. —p. or thereabouts and situated in the Parish of —— in the County of —— together with the messuages and buildings erected thereon [which piece of land by an Award made, &c., was allotted for the getting of stone and gravel for repairing the highways and roads mentioned in that Award for the use of the inhabitants of

Parcels.

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the repayment of the money by instalments or a sinking fund, but see *West Derby Union* v. *Metropolitan, &c., Society* [1897], A. C. 647; 66 L. J. Ch. 726, where repayment is otherwise provided for by contract.

(*r*) Where, under s. 1 of the Sale of Exhausted Parish Land Act, 1876, land has been allotted to or otherwise acquired by a parish, whether in the name of the surveyor of highways or other trustees or generally for the purposes of the supply of materials for the repair of public highways, &c., and the materials are exhausted or unsuitable, &c., then s. 3 of the Union and Parish Property Act, 1835, applies. The latter section authorises the Guardians or the Overseers (where there are no Guardians) to sell property belonging to the parish or union with the consent of the Poor Law Commissioners (now the Minister of Health).

Joint effect of s. 1 of the Sale of Exhausted Parish Land Act, 1876, and s. 3 of the Union and Parish Property Act, 1835.

(*s*) For Form of Conveyance, see Schedule to the Union and Parish Property Act, 1835, on which this Prec. is based.

(*t*) An order of the Minister of Health must be obtained directing the Guardians to sell, and the consent of the parish meetings of the parishes concerned (held in accordance with the provisions of the L. G. Act, 1894), and of a meeting of the ratepayers and owners of property entitled to vote in the parishes concerned, to the sale of the interests of the parish in the land must be previously obtained.

Order of M. of H. directing the sale necessary.

The consent of the ratepayers or parish meeting is not required when the disposition is made by the Guardians of a separate parish: Poor Law Act, 1889, s. 8.

If desired a recital of the Order of the Ministry of Health may be added to the Conveyance.

the parishes of —— (*u*) and] which piece of land is more particularly delineated on the plan drawn on these presents and thereon coloured pink

UNTO and to be Holden by the said A. B. in fee simple. [*Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS whereof the said Guardians have caused their common seal to be hereunto affixed the day and year first above mentioned.(*v*)

GROUP C.—CONVEYANCES BY CHARITIES AND TO AND BY CLUBS, FRIENDLY SOCIETIES AND TERRITORIAL ASSOCIATIONS.

No. I.

CONVEYANCE *upon a* SALE *of* CHARITY LAND *with* CONSENT *of* CHARITY COMMISSIONERS.(*a*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, the —— day of ——, 19—,

(*u*) The words in square brackets apply where the land was originally acquired by the parish under an Inclosure Award. In such a case the Statutory Declaration by the Clerk to the Guardians or other competent person as to identity and as to the transfer of the interest in the land from the surveyors of highways or other authority in which it was originally vested to the Rural District Council under the L. G. Act, 1894, should be obtained.

(*v*) The receipt for the consideration will be endorsed, signed and witnessed. As to registered land, see the general note at the end of this section.

Sale of charity land.

(*a*) The trustees of an "endowed" charity cannot sell otherwise than with the express authority of Parliament, or of a court or judge of competent jurisdiction, or according to "a scheme legally established," or with the approval of the Board of Charity Commissioners: Charitable Trusts Act, 1855, s. 29; Charitable Trusts Act, 1862, s. 1; see also Dissertation in Vol. III.

"Endowed" or "Mixed."

on Charities as to when a charity is considered "endowed," or where a charity can be treated as a "Mixed Charity," see Articles by Mr. Withers in 69 Sol. J., pp. 133 to 135, 155, 156, 170 to 172, 188 to 190. A deed founding a charity and enrolled under 9 Geo. 2, c. 36, is not a "scheme legally established": *Re Mason's Orphanage* [1896], 1 Ch. 596; 65 L. J. Ch. 439; nor is a charity incorporated by Royal Charter: *A.-G.* v. *Nat., &c., Epileptic Hospital* [1904], 2 Ch. 252; 73 L. J. Ch. 677.

Additional powers given by S. L. Act, 1925.

By S. L. Act, 1925, s. 29, the managing trustees of land held on or for charitable, ecclesiastical or public trusts or purposes are in reference to the land given all the powers which are by that Act conferred on a tenant for life and on the trustees of the settlement. The powers are exercisable (sub.-s. 2) subject to such consents or orders, if any, being obtained as would have been requisite if the transaction were being effected under an express power conferred by the instrument creating the trust. The Official Trustee is not liable for giving effect to the directions of the managing trustees or committee of management. Where the disposition is to be effected for a nominal price or rent or gratuitously or any interest in land is to be acquired the like consent or order (if any) is required as if the transaction were a sale. The section does

BETWEEN The Official Trustee of Charity Lands (*b*) (hereinafter called the Official Trustee), of the 1st part, A. B., of, &c., C. D., of, &c., and E. F., of, &c., being the managing trustees of certain charities in the Parish of ——, in the County of ——, known as the —— Parochial Charities (hereinafter called the Trustees), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

(1) The property hereinafter described is part of the property of the said charities: — Land is part of charity property.

(2) Under a scheme established by an Order of the Board of Charity Commissioners for England and Wales (hereinafter called the Board) dated the —— day of ——, 19—, the legal estate in the said property is now vested in the Official Trustee in trust for the charities: — Legal estate in Official Trustee.

(3) The Trustees have, subject to the consent of the Board, agreed to sell to the Purchaser the said property and the fee simple thereof in possession free from incumbrances at the price of £——: — Agreement by Trustees to sell.

(4) By an Order of the Board, dated, &c., the Board upon the application of the Trustees authorised them, within six calendar months from the date of the said Order, to sell the said property for not less than £——, and to execute all proper acts and assurances for carrying the said sale into effect And — Order of Board authorising sale.

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not affect the jurisdiction of the court, Charity Commissioners or Board of Education, or other competent authority: sub-s. 3. — Conveyances of legal estates.

Where any trustees or the majority of trustees have power to convey a legal estate vested in the official trustee or other persons, they must convey in the names of the persons in whom that estate is vested: sub-s. 5. The section does not apply where the Universities and College Estate Act, 1925, is applicable, for that Act incorporates the requisite S. L. Act powers: sub-s. 6. — Universities and College Estates.

In the above Prec. it is assumed that the consent of the Board is necessary, and that the legal estate is vested in the official trustee.

Where the trustees have power to determine on any sale, &c., of the charity property, a majority of them present at a meeting of their body duly constituted and voting on the question may execute all assurances, &c., for carrying the sale into effect, and such assurances, &c., have the same effect as if executed by all the trustees and by the official trustee (Charitable Trusts Act, 1869, s. 12); but they must convey in the names of all of them: S. L. Act, 1925, s. 29 (5). — Majority to convey in names of others.

In the case of land held for public educational purposes the Board of Education for most purposes act in the place of the Charity Commissioners: Board of Education (Powers) Orders in Council, 1900, 1901, 1902; Tudor, 4th ed., 760, *et seq.*; *Re Betton* [1908], 1 Ch. 205; 77 L. J. Ch. 193; *Re Berkhamsted School* [1908], 2 Ch. 25; 77 L. J. Ch. 571. — Educational purposes.

(*b*) The Secretary of the Board of Charity Commissioners is by s. 15 of the Charitable Trusts Act, 1855, constituted a corporation sole by the name of "The Official Trustee of Charity Lands."

the Official Trustee was ordered to concur in the conveyance thereof if such concurrence should be required:

NOW THIS DEED WITNESSETH as follows:—

Conveyance. 1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Trustees (the receipt of which sum the Trustees hereby acknowledge), the Official Trustee, pursuant to the said Order and at the request of the Trustees (testified by their execution hereof), hereby conveys(*c*), and the Trustees, As Trustees, hereby convey and confirm unto the Purchaser,

Parcels. All, &c. (*see Forms in Sec. II, p. 471, et seq.*),

To hold unto the Purchaser in fee simple.

[2 and 3. *Add acknowledgments as to documents, if required, Form No. 5, Sec. III, p. 480, also Form No. 8, Sec. III, p. 483.*]

In witness, &c.

II.

CONVEYANCE *upon a* Sale *by* Trustees *of a* Charity *supported by* Voluntary Contributions.(*d*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, the —— day of ——, 19—, Between A. B., of, &c., C. D., of, &c., and E. F., of, &c. (hereinafter called the Vendors), the Trustees of a Charitable Institution established at ——, called ——, of the one part, and G. H., of, &c. (hereinafter called the Purchaser), of the other part: Whereas:—

Conveyance to Trustees. (*Recite conveyance to the Vendors of property of which the land sold is part, with any appointments of new trustees. If the land was originally conveyed to trustees on trust for sale and trusts were declared of the net proceeds for the benefit of the charity by a separate document, then the conveyance by the trustees will not contain any reference to the charity, and the following recitals will be omitted. The Vendors will merely agree to sell as trustees for sale.*)

Purchase-money arose from voluntary contributions. (2) The said sum of £—— paid as purchase-money for the property comprised in the recited conveyance arose entirely

(*c*) The Official Trustee gives no covenants for title. His legal estate is not divested: L. P. Act, 1925, 1st Sch., Pt. II.

Registered land. As to registered land, see the general note at the end of this section, and, generally, L. R. Act, 1925, s. 98, and L. R. R., 1925, rr. 128-32.

Consent of Charity Commissioners. (*d*) Where the charity is maintained entirely by voluntary contributions and has no endowment, the consent of the Charity Commissioners is not necessary, see Dissertation on Charities in Vol. III; also articles by Mr. Withers in 1924, 69 Sol. J., pp. 133 to 135, 155, 156, 170 to 172, 188 to 190.

from voluntary contributions, or from bequests or donations applicable consistently with the terms of the gift as income for the general purposes of the said Institution at the discretion of the committee of management for the time being:

(3) At a general meeting of the Governors of the said Institution held at —— on the —— day of —— last it was resolved that the property hereinafter described, being no longer required for the purposes of the said Institution, should be sold by the committee of management at such price as the committee should think fit: Meeting of Governors at which committee was empowered to sell.

(4) The committee of management entered into negotiations with the Purchaser for the sale of the said property and the Purchaser made an offer of £—— for the same: Offer by Purchaser.

(5) At a meeting of the committee of management held at —— on the —— day of —— last it was resolved that the offer of the Purchaser to purchase the said property for £—— should be accepted, and that the Vendors, as the Trustees of the said Institution, be directed to convey the said property to the Purchaser and to receive the purchase-money: Resolution of committee accepting offer.

NOW THIS DEED WITNESSETH as follows:— (*e*) Conveyance.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors, as the Trustees of the said Institution (the receipt, &c.), the Vendors, As Trustees, hereby convey unto the Purchaser,

All, &c. (*see Forms, Sec. II, p.* 471, *et seq.*), Parcels.

To hold unto the Purchaser in fee simple.

[2 and 3. *Add acknowledgment by Vendors as to recited Conveyance and Minute Book, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.

No. III.

DECLARATION OF TRUST *of the proceeds of sale and of the rents and profits until sale of land purchased for the purposes of a* Social Club.(*f*) (*Equitable Interests.*)

THIS DECLARATION OF TRUST is made by A. B., of, &c.,

(*e*) As to registered land; in the case supposed, the land would be vested in trustees (not a corporation) who would be entered as proprietors on the register. The Conveyance will be effected by instrument of transfer in the usual form (No. 19 in the Rules). If (as is probable) there are restrictions on the register, they must be complied with. Registered land.

(*f*) A club formed for social purposes, not being an incorporated body or a registered society, has no legal status. The members of such a club are, Club property.

C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*trustees of Club*) (hereinafter called the Trustees), this —— day of ——, 19—: WHEREAS :—

(1) The Trustees are the Trustees of a Club established at, &c., known as the X. Club :

Purchase by committee of Club.

(2) The property described in the Schedule hereto has been purchased by the committee of the said Club out of its funds, pursuant to a resolution passed at a meeting of the members of the said Club duly convened and held at —— on the —— day of —— last :

Rule enabling committee to vest property in Trustees on trust for sale and declare trusts of the proceeds of sale, &c.

(3) By one of the rules of the said Club it is provided that the committee shall have power, at its sole discretion, to vest the whole or any part of the property of the Club in trustees and as respects land upon trust for sale with power to postpone the sale, and subject to such conditions as to management or otherwise as the committee may think fit, and to direct the acquisition or disposal of any property required or not required for the purposes of the Club, and that in every case where at the foot of any deed or other document it is certified by three persons appearing to be the secretary and two of the members for the time being of the committee of the Club that the document has been executed in accordance with the directions of the committee or a resolution of the Club, such certificate shall, in favour of any person acquiring any interest in property for valuable consideration in money or money's worth, and subject only to express notice to the contrary be conclusive evidence that the document is binding on the Club and every member thereof :

Conveyance of property to Trustees on trust for sale.

(4) The committee have directed that any land purchased as aforesaid shall be conveyed so as to vest in the Trustees on trust for sale, with power to postpone the sale and with the full powers of management conferred by law on trustees for sale, and accordingly, by a Conveyance bearing even date with but executed before these presents, and made between X. Y.

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however, bound among themselves by the rules to which they have agreed. Every member has an interest in the property of the club so long only as he remains a member, and if the club is broken up while he is a member he is entitled to share in the distribution of its assets : *Re St. James's Club* (1852), 2 D. M. & G. 383.

Conveyance on trust for sale.

After 1925 land should be vested in trustees on trust for sale with power to postpone, and by a deed of even date the trusts of the proceeds of sale and of the land until sale should be declared. It is unnecessary to give the form of the conveyance on trust for sale, that is sufficiently shown by the recital, but a power to raise money on mortgage should be added therein.

of the one part and the Trustees of the other part, the freehold property mentioned in the Schedule hereto has been conveyed to the Trustees in fee simple Upon trust to sell the same and stand possessed of the net proceeds of sale and any capital money arising under the statutory powers, and of the net rents and profits of the said property until sale upon the trusts declared by a deed poll of even date therewith (meaning these presents) :

Direction by committee as to trusts.

(5) The committee have directed that the said proceeds of sale and the said property or the rents and profits thereof until sale shall be held upon the trusts hereinafter contained :

NOW THESE PRESENTS WITNESS and it is HEREBY DECLARED as follows :—

Declaration that Trustees shall hold premises until sale in trust for members of Club.

1. THE Trustees (*g*) shall stand possessed of the property described in the Schedule hereto until sale or other disposition Upon trust to permit the same to be used, occupied, and enjoyed by the Club and the members thereof from time to time in accordance with the rules and regulations for the time being of the Club, and subject to the directions of the committee.

Management.

2. THE Trustees shall, until sale or other disposition as aforesaid, out of the funds of the Club keep the said property in proper repair and insured against loss or damage by fire, and generally manage the same under the directions of the committee.

Property to be disposed of as directed by resolution of members.

3. IF and whenever a resolution shall be passed by a majority of not less than two-thirds of the members present at a duly convened meeting of the Club, or voting by proxy thereat, directing that the said property or any part thereof shall be sold, exchanged, mortgaged, leased, or otherwise disposed of or dealt with, the Trustees shall, in exercise of the trusts or powers implied by law, comply with such resolution, and execute and do all deeds, acts and things necessary or proper for carrying the same into effect, and no purchaser, lessee, mortgagee, or other person acquiring any interest in the said property for money or money's worth shall be concerned to see or inquire whether any such resolution has been passed.

(*g*) See T. Act, 1925, ss. 18, 35 and 41. The definition "the Trustees" means, for the purposes of trusts and powers, the original trustees and the survivors or survivor of them or the executors or administrators of such survivor or other the trustees or trustee for the time being of the trust instrument. There must not be more than four trustees for sale (*ib.*, s. 34); nor less than two : L. P. Act, 1925, s. 28.

Meaning of "the Trustees." Number of trustees for sale.

Proceeds of sale, &c., to be assets of Club.

4. ALL money arising from any sale, mortgage or other disposition of the said property, and all rents and profits received in respect of the said property, shall be assets of the Club in like manner as if the same had arisen from the subscriptions of members.

Resignation or removal of trustee.

5. ANY present or future trustee of these presents may resign the trusteeship at any time by a note in writing addressed to the secretary or to the committee expressing his wish to resign and the committee may by writing signed by the secretary at any time remove any trustee from the trusteeship of these presents.

Power to appoint new trustees.

6.—(1) WHENEVER there shall be a vacancy in the trusteeship by death, resignation, removal, or any other cause, the committee may by resolution nominate one or more trustee or trustees to supply the vacancy, and upon any such appointment the number of trustees may be increased or reduced, provided that the number be never less than two nor more than four.

(2) UPON every such nomination the statutory power to appoint new trustees of the said Conveyance of even date shall become and be exercisable, so that the same persons who are for the time being trustees hereof shall be appointed to act as the trustees of that Conveyance, and the said property shall be vested in them accordingly by a separate instrument in accordance with section thirty-five of the Trustee Act, 1925.

Resolution of committee or of members of club, how to be evidenced.

7. WHENEVER by these presents, or by the rules of the Club, a resolution of the committee or of a meeting of the members of the Club is required, a copy of such resolution, purporting to be signed by the secretary of the Club and by two members of the committee, shall be sufficient evidence thereof, and that the same was duly passed.

IN WITNESS, &c.

THE SCHEDULE.

(*To contain the parcels.*)

MEMORANDUM (*at foot of the above deed*).

WE, the undersigned persons, certify that the above-written deed has been executed in accordance with the directions of the committee of the Club.(*h*)

L. M., Secretary of the Club.
P. Q. } Members of the
R. S. } Committee.

Registered land.

(*h*) This Precedent will apply to registered land, substituting in Recital (4) for the words " by a Conveyance " to the end of the recital, the words " the

No. IV.

CONVEYANCE *to the* TRUSTEES *of a* FRIENDLY SOCIETY *or* WORKING MEN'S CLUB *established under the* FRIENDLY SOCIETIES ACTS.(*i*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c., the Trustees of the —— Society [*or* the —— Working Men's Club] established at ——, in the County of ——, and registered under the provisions of the Friendly Societies Act in force at the time of such registration (hereinafter called the Trustees), of the other part: Parties.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described, and has agreed to sell the same for a like estate in possession free from incumbrances to the Trustees at the price of £——: Seisin and agreement for sale.

Trustees have been registered as proprietors of the land mentioned in the schedule hereto," and adding to the operative para. 6 the words " and they shall be registered as proprietors thereof in the Land Registry."

(*i*) A working men's club is one of the societies authorised to be registered by the Friendly Societies Act, 1896, s. 8 (2), and is therein defined as a society for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation. The Act provides that every society registered thereunder shall have a registered office (s. 24), and one or more trustees to be appointed at a meeting (s. 25); and a copy of every resolution appointing a trustee, signed by the trustees so appointed and by the secretary, must be sent to the Registrar; and that the same person must not be secretary or treasurer and a trustee (s. 25). The Act also provides that a registered society may (if the rules so provide) hold, purchase, or take on lease in the names of the trustees any land; and may sell, exchange, mortgage, lease, or build upon the same; and no purchaser, assignee, mortgagee, or tenant is bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the trustees; and the receipt of the trustees is a discharge for all money arising from or in connexion with such sale, exchange, mortgage, or lease (s. 47). The Act also provides that all property belonging to a society shall vest in the trustees for the time being of the society for the use and benefit of the society and the members thereof, and of all persons claiming through the members, according to the rules of the society (s. 49); and that upon the death, resignation, or removal of a trustee the property vested in that trustee shall vest in the succeeding trustees, either solely or together with any surviving or continuing trustees, and until the appointment of succeeding trustees, in the surviving or continuing trustees only, or in the executors or administrators of the last surviving or continuing trustee, as personal estate, subject to the same trusts without any conveyance (s. 50). Provisions of Friendly Societies Act, 1896.

The provisions of the Friendly Societies Act, 1896, respecting the vesting of the legal estate in land in trustees of the society are expressly saved by L. P. Act, 1925, s. 7 (3) (*a*). Vesting of legal estate belonging to a Friendly Society.

As to the matters to be provided for in the rules of the society, see the First Schedule to the Act; also Friendly Societies Act, 1908.

Conveyance. NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees out of the funds of the Society [*or* Club] to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Trustees,

Parcels. All, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum. To hold unto the Trustees in fee simple for the use and benefit of the said Society [*or* Club] and the members for the time being thereof, and of all persons claiming through the members according to the rules of the said Society [*or* Club].

[2 and 3. *Acknowledgment, &c., as to documents, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.(*j*)

No. V.

CONVEYANCE *by the* Trustees *of a* Friendly Society *or* Working Men's Club *to a* Purchaser *of* Property *acquired under the last* Precedent.(*k*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., Between C. D., of, &c., E. F., of, &c. (*the continuing Trustees*), and X. Y., of, &c. (*a new Trustee*), the Trustees, &c. (*as in the last Precedent, and defining them as the Trustees*), of the one part, and J. K., of, &c. (hereinafter called the Purchaser), of the other part: Whereas:—

(1) (*Recite last Precedent, referring to the parcels as* "the property hereinafter described"):

Appointment of new Trustee at a meeting of members. (2) At a meeting of the members of the said Society [Club] held at ——, being their registered office, on the —— day of ——, 19—, the said G. H. having stated in writing that he was desirous of resigning his trusteeship, it was resolved by a majority of the members present and entitled to vote thereat that the resignation of the said G. H. be accepted and that the said X. Y. be appointed a trustee of the said Society [Club] in his place jointly with the said C. D. and E. F., and a copy of the said

Registered land. (*j*) As to registered land, the conveyance will be effected by an instrument of transfer in the usual form (No. 19 in the Rules); the trustees will be described as in the above Precedent; on registration, evidence must be produced of the provisions under which the property (if it is the case) vests in the trustees for the time being.

(*k*) See note to last Prec.

resolution, signed by the said X. Y. and by the secretary of the Society [Club] was sent to the Registrar of Friendly Societies (*l*.)

Agreement by Trustees to sell.

(3) Pursuant to a resolution passed at a meeting of the members of the said Society [Club] held at —— on the —— day of —— last, the Trustees, as the trustees of the said Society [Club] have agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:(*m*)

Conveyance.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Trustees (the receipt of which sum the Trustees hereby acknowledge), the Trustees, As Trustees, hereby convey unto the Purchaser,

Parcels.

All, &c. (*see Forms, Sec. II, p.* 471, *et seq.*),

To hold unto the Purchaser in fee simple.

[2 and 3. *Add acknowledgment by the Trustees of the right of the Purchaser to production of the rules and any other documents retained, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.(*n*)

No. VI.

CONVEYANCE *by an owner in fee to a* County Association *for military purposes under the* Territorial and Reserve Forces Act, 1907.(*o*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., Between A. B., of, &c., (hereinafter called the Vendor) of the one part, and the Territorial

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Rules; evidence.

(*l*) F. S. Act, 1896, s. 25. A purchaser from a registered society should require the production of a copy of the rules with the acknowledgment of the registration (see forms in 2nd Sch. to the Act of 1896, and also to the Act of 1908), bearing the seal or stamp of the Central Registry Office (Act of 1896, ss. 11, 98), and also a copy of the resolution appointing the trustees by whom the sale is made.

The property vested in all three trustees on the appointment of X. Y., see s. 50.

Receipts.

(*m*) The purchaser is not concerned to inquire as to the validity of the sale, and the receipt of the trustees is a good discharge: Act of 1896, s. 47 (1).

Registered land.

(*n*) As to registered land: the conveyance will be effected by an instrument of transfer in the usual form (No. 19 in the Rules): the Vendors will be described as C. D., E. F. and X. Y. "the trustees for the time being of (*the Society*)" and evidence of the appointment of X. Y. as a new trustee will be produced on registration.

Volunteer Force Regulations.

(*o*) Under the Volunteer Force Regulations, 1901, para. 407, the whole of the property of a Volunteer Corps was vested in the commanding officer

for the time being, and under the same regulations, para. 413, the consent of the Secretary of State was necessary to enable a corps to acquire land for military purposes. Under the Territorial and Reserve Forces Act, 1907, and an Order in Council of 19th March, 1908, all property belonging to or held for the benefit of any unit of the Volunteers or Yeomanry mentioned in the first column of the schedule thereto, and vested in the commanding officer of any corps or regiment of Volunteers or Yeomanry as such, became vested in a county or other association formed under that Act, subject to any charges thereon, to be held by the Association for the benefit of the corresponding unit of the Territorial Force. Provision was also made by the same section for vesting the legal estate in copyhold or customary land in trustees appointed by the Association; the land as enfranchised by L. P. Act, 1922, will now vest in such trustees. By the Territorial Army and Militia Act, 1921, the Territorial Force was re-named the Territorial Army. The regulations now in force relating to the acquisition of land by an association for military purposes are contained in the Regulations for the Territorial Force and County Associations, 1910, App. 14 and App. 15. They require that the consent of the Army Council shall be previously obtained both to the acquisition and the disposition of land by an Association. The provisions of the Military Lands Acts, 1892 to 1903, are adopted (App. 14, s. 3), and the provisions of the Lands Clauses Acts are, with certain exceptions, incorporated with the Military Lands Act, 1892 (App. 15, s. 2). As to procedure when an association desires to employ compulsory powers, see App. 14, s. 9. As to borrowing money for Territorial purposes, see Public Works Loans Act, 1908.

Vesting of enfranchised land.

Association corporate body, power to hold land without licence in mortmain.

The Association is a body corporate and is empowered to acquire and hold land without a licence in mortmain, T. and R. F. Act, 1907, s. 1 (3) (*b*), and the 1910 Regulations, App. 2, s. 2.

Registered land.

As to registered land. The evidence mentioned in the recitals (2) and (3) will have to be produced on registration, as well as the particulars mentioned below.

General Note to Section III.

Transfers of registered land to corporations

Conveyances of registered land to corporations are regulated by L. R. R., 1925, r. 121, which requires a special form of transfer (No. 35) to be used referring to the licence in mortmain or statute enabling the corporation to acquire and hold land. If the amount tenable by the corporation or the purposes for which it may be used are limited, a statement must be added showing that the land transferred (with other land already held) does not exceed the limit and showing the purposes for which the land is licensed. The statement is to be proved by statutory declaration or otherwise as the Registrar may direct. Exceptions to the above are (1) transfers from the Ecclesiastical Commissioners to an incumbent (which are wholly exempt), and (2) transfers to companies for profit under the Companies Acts (which require no Reference to the licence or statute) but on registration, the Memorandum and Articles of Association must be produced to show that the statutory powers of a proprietor under the L. R. Act, 1925, are not affected by them. If they are affected, a note is placed on the register. All transfers to incumbents involve an inhibition on the register—see r. 232 and Form 73 and L. R. Act, 1925, s. 99. Execution by the corporation will be effected in the manner indicated in the appropriate Precedent above. Conveyances of registered land by corporations are made by instrument of transfer in ordinary form (No. 19 in the Rules). If there is a restriction or inhibition on the register, its terms must be complied with. Transfers by incumbents are the subject of special regulations requiring certificates from Queen Anne's Bounty, the Minister of Agriculture and Fisheries or the Ecclesiastical Commissioners as the case may be. In the case of a sale under the Glebe Lands Act, the receipt of the

Transfers to incumbents.

Transfers by companies.

Transfers by incumbents.

Army Association for the County of —— (hereinafter called the Association) of the other part: WHEREAS:—

(1) The Vendor, &c. (*Form No.* 1, *Sec. I, p.* 452): Seisin of vendor.

(2) The Association requires the said property for military purposes and is by the Military Lands Acts, 1892 to 1903, and the Territorial and Reserve Forces Act, 1907, and the Regulations made pursuant thereto, authorised to acquire and to hold land subject to the consent of the Army Council: Power to acquire land subject to consent of Army Council.

(3) The consent of the Army Council has been obtained to the acquisition of the said property by the Association: Consent of Army Council.

(4) The Association has agreed with the Vendor for the purchase of the property hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——: Agreement for purchase.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Association to the Vendor (the receipt, &c.) the Vendor, As Beneficial Owner, hereby conveys unto the Association, Conveyance.

ALL THAT, &c. (*see Forms, Sec. II, p.* 471, *et seq.*), Parcels.

TO HOLD unto the Association in fee simple. Habendum.

[2. *Add acknowledgment and undertaking, if required, Form No.* 4, *Sec. III, p.* 480.]

IN WITNESS, &c.

Minister of Agriculture is a sufficient certificate (r. 233). In other cases the certificate is to be in Form 74 (r. 234).

There is no express provision in the Act or Rules as to transfers by the liquidator of a company, but the fact of his appointment can be noted on the register, after which transfers executed by him will be accepted for registration. Otherwise proof of his appointment must be produced on each transfer. There will be no recitals, but the instrument of transfer should begin: "(*date*) In consideration of —— pounds (£——) paid to A. B., of, &c. (*the liquidator*) the duly appointed liquidator of (*the Company*) We (*the Company*) hereby transfer and I (*the Liquidator*) hereby as trustee transfer and confirm to &c., &c.)." The transfer should be executed as in the Precedent, Group A, No. VII. Transfers by liquidators.

Section IV.

CONVEYANCES ARRANGED ACCORDING TO THE SUBJECT-MATTER OF THE PROPERTY CONVEYED.

Group A.—Conveyances on Sales subject to Mortgage (*a*) Debts.

No. I.

CONVEYANCE *of* Freeholds *subject to a Legal Mortgage.* (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., Between A. B., of, &c.

Equity of redemption no longer an accurate term as respects land.

(*a*) After 1925 it will not be strictly accurate to speak of "an equity of redemption" as respects land, for though the mortgagor retains a right of redemption he also has a legal estate in the land, *i.e.*, in the case of freeholds the fee simple, in the case of leaseholds the head term. The mortgagee will only have a legal charge (charge by way of legal mortgage) or a mortgage term derived out of the fee simple or the term created by the lease, as the case may be.

Land must not be sold subject to family charges.

In former editions Precedents were given of conveyances subject to family charges. After 1925 such transactions are not only unnecessary, but in effect are prohibited. They are unnecessary because the trustees of a settlement are the S. L. Act trustees not only of that instrument but of any instruments subsequent in date or operation (S. L. Act, 1925, s. 31); and they remain such trustees.

An unnecessary transaction.

So long as the settlement subsists or is deemed to be subsisting the trustees can act: *ib.*, s. 33; land which has been the subject of a settlement remains settled land and the settlement subsists so long as any limitation, charge or power of charging is on foot as well as during a minority: *ib.*, s. 3. Hence, provided there are S. L. Act trustees, no difficulty arises in overreaching family charges under an instrument even if that instrument is spent for all other purposes.

A prohibited transaction.

Such transactions are prohibited for several reasons. First, where there is a compound settlement, that is the settlement under which title must be made: *ib.*, s. 1 (1), last proviso. The principle is that when title to a legal estate is made, a purchaser is entitled to have it made in the best way available. Secondly, if a purchaser were so ill-advised as to acquire a legal estate subject to family charges or powers of charging under a settlement, he himself would, as respects the land acquired, become a person having the powers of a tenant for life (*ib.*, s. 20 (1) (ix)); the former settlement plus his conveyance *semble* would be the settlement of the land (*ib.*, s. 1 (1) (v)); the result would be that he could not make a title to the legal estate, whether by way of sale, mortgage or lease, until a vesting instrument had been executed: *ib.*, s. 13. All capital money would have to be paid to the S. L. Act trustees nominated in the vesting instrument (*ib.*, s. 18), until they executed a deed of discharge (*ib.*, s. 17), which they could do when the charges and powers of charging had been satisfied or released. No doubt if the trustees were satisfied that the family charges were abundantly secured independently of the capital money they would pay it to him, but they would not be bound to do so.

Unable to make title to the

As no legal estate would pass till a vesting deed had been executed (*ib.*, s. 13) it follows that a subsequent purchaser, mortgagee or lessee would under L. P. Act, 1925, s. 42, insist on title being made under the S. L. Act, unless evidence

could be furnished to show that the family charges had been cleared. If a vesting deed had been executed before the charges were cleared, a deed of discharge under s. 17 would be necessary before title could be made otherwise than under the S. L. Act, 1925.

legal estate save under the S. L. Act.

Under L. P. Act, 1925, s. 42, a purchaser can insist on title being made under S. L. Act, 1925, in place of a person entitled to a family charge joining in the conveyance (*ib.*, sub-s. 1); hence if such charges are to be released this should be done before the conveyance is made. He can also refuse to contribute towards the costs of obtaining the appointment of S. L. Act trustees or the execution of vesting instrument required to bring that Act into force: *ib.*, sub-s. 2. Also he can insist on a legal estate being got in by the vendor, and can always object if the legal estate would be left outstanding: *ib.*, sub-s. 3. If the vendor purports to sell an equitable interest capable of subsisting as a legal estate (*e.g.*, an equitable fee simple or term of years absolute) then if the vendor has power to vest the legal estate in the purchaser or to require it to be so vested, the contract will extend to the legal estate: *ib.*, sub-s. 4, (ii). The vendor has no power to rescind the contract if the purchaser insists on his rights: *ib.*, sub-s. 8.

The inalienable rights of a purchaser.

If before 1926 land is conveyed subject to family charges, whether or not the purchaser is given an indemnity against the same, when he proposes to make title, his procedure will be as follows: (1) He will ascertain whether or not the family charges have been cleared; (2) If the family charges have been cleared, he will obtain the requisite evidence that this has been done and can sell as absolute owner without the aid of the S. L. Act, 1925; (3) If they have not been cleared he will endeavour to obtain the requisite releases; (4) Failing these he will call on the S. L. Act trustees of his former vendor to execute a vesting deed which will enable him to make title under the S. L. Act, 1925; (5) If there are no such trustees he will apply to the court under S. L. Act, 1925, s. 34, for the appointment of trustees of the compound settlement and then call on them to execute a vesting deed to bring the statutory powers into force. The settlement creating the family charges was at one time a settlement, *semble* it becomes one again: *ib.*, ss. 3, 117 (1) (xxiv), (a "settlement subsisting at the commencement of this Act" includes a settlement "created by virtue of this Act immediately on the commencement thereof") notwithstanding that on 31st December, 1925, the land had ceased to be settled land; thus the land comes within 2nd Sch., para. 1 (2), which renders necessary a vesting deed.

Purchase subject to family charges before 1926.

It is submitted that the vendor's settlement (so revived) with the conveyance to the purchaser together constitute a compound settlement of the land sold before 1926, and that the trustees of the vendor's settlement are the S. L. Act trustees of the compound settlement: ss. 31 and 33.

On a sale subject to a mortgage the vendor remains liable under his personal covenant, if he has entered into one, for the payment of the mortgage debt, and is entitled to have a covenant from the purchaser to indemnify him against it: *Waring* v. *Ward* (1802), 7 Ves. 332; and see *Mills* v. *United, &c., Bank* [1912], 1 Ch. 231; 81 L. J. Ch. 210.

As to liability of vendor after sale of equity of redemption.

If it is wished to discharge the vendor from all future liability, one of the two following courses should be adopted, viz.: (1) The mortgagee should, unless any doubt would arise as to priorities, concur in the conveyance and release the debt, and a new mortgage be made to him by the purchaser by a deed executed immediately after the conveyance; or (2) there should be a contemporaneous deed (which might be endorsed on or be made supplemental to the mortgage deed) whereby the purchaser enters into a new covenant with the mortgagee, which the latter accepts in substitution for the vendor's covenant. See next Prec.

(hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Mortgage and conversion into long term.

(1) and (2) By a Mortgage dated the —— day of ——, and made between the Vendor of the one part, and E. F. and G. H. (hereinafter called the Mortgagees) of the other part (*Recite Mortgage as in Form No. 2, Sec. I, p. 452*):

That mortgage debt still owing.

(3) The said principal sum of £—— is still owing to the Mortgagees upon the security of the recited Mortgage, but all interest thereon has been paid up to the date hereof:(*b*)

Agreement for sale.

(4) The Vendor has agreed to sell to the Purchaser the property hereinafter described, subject to the recited Mortgage and the principal money and interest thereby secured, but otherwise free from incumbrances, at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt, &c.), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

ALL, &c. (*Forms in Sec. II, p. 471, et seq.*),

Habendum.

TO HOLD unto the Purchaser in fee simple subject to the recited Mortgage and the term of 3,000 years subsisting thereunder and also to the principal sum of £—— thereby secured, and all interest henceforth to become due thereon.

Covenant by Purchaser to indemnify the Vendor from mortgage debt.

2. THE Purchaser hereby covenants with the Vendor that the Purchaser or the persons deriving title under him will pay the said principal sum of £—— and all interest henceforth to become due under the recited Mortgage and observe and perform all the covenants and conditions therein contained And also will at all times hereafter save harmless and keep indemnified the Vendor and his estate and effects from and against all proceedings, costs,

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Stamp on conveyance of equity of redemption.

The *ad valorem* stamp on this deed will be on the purchase-money, *plus* the sum due to the mortgagee (Stamp Act, 1891, s. 57); but in the case of a voluntary conveyance of an equity of redemption the stamp under s. 74 of the Fin. (1909–10) Act, 1910, is only *ad valorem* on the value of the equity conveyed.

If the mortgagee joins, the conveyance is not chargeable with further duty on account of a covenant by the purchaser with him to pay the mortgage debt and interest: Alpe, 18th ed., 126; Revenue Act, 1903, s. 7.

Registered land.

As to registered land, the conveyance will be effected by a transfer (Form 19) without reference to the charge, except a covenant to indemnify the vendor, adapted from para. 2 in the above Prec.

(*b*) It should be seen that this is done.

claims and expenses on account of any omission to pay the said principal sum and interest or any breach of any of the said covenants and conditions.(*c*)

[3. *Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

No. II.

DEED *of* COVENANT *by a* PURCHASER *of* FREEHOLDS *or* LEASEHOLDS, *subject to a* LEGAL MORTGAGE *to pay the* MORTGAGE DEBT *the* COVENANT *being accepted in* SUBSTITUTION *for the* VENDOR'S COVENANT.(*d*)

THIS DEED OF COVENANT is made, &c., BETWEEN C. D., of, &c. (hereinafter called the Purchaser), of the 1st part, E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the 2nd part, and A. B., of, &c. (hereinafter called the Vendor), of the 3rd part: WHEREAS:— Parties.

(1) These presents are supplemental to a Mortgage (hereinafter called the Principal Deed) dated the —— day of ——, and made between the Vendor of the one part and the Mortgagees of the other part, being a [charge by way of legal mortgage] [*or* mortgage by demise] [*or* mortgage by sub-demise] [*or* a mortgage of the fee simple, *in this case add a recital that by virtue of the L. P. Act*, 1925, *the fee simple has been converted into a term of* 3,000 *years*] by the Vendor to the Mortgagees of certain property situated, &c., for securing payment to them of the principal sum of £—— and interest thereon at the rate of £—— per cent. per annum: Supplemental to mortgage deed.

(*c*) This covenant will be omitted if the purchaser enters into a new covenant with the mortgagee. Covenant for indemnity on sale of equity of redemption.

The conveyance of the land subject to the mortgage does not create a personal liability on the part of the purchaser to the mortgagee, as there is no privity of contract between him and the mortgagee (*Re Errington* [1894], 1 Q. B. 11); but as between the purchaser and the vendor there is an implied covenant that the purchaser will indemnify the vendor against the mortgage debt: *Waring* v. *Ward* (1802), 7 Ves. 332. An express covenant ousts this implied liability: *Mills* v. *United Counties Bank, Ltd.* [1912], 1 Ch. 231; 81 L. J. Ch. 210.

The deeds will probably be in the possession of the mortgagees. If any documents are retained by the vendor he should give the usual acknowledgment and undertaking in the conveyance. Documents.

(*d*) The stamp on the deed will be 6*d.* for every £100 secured (Alpe, 18th ed., 197), but not exceeding 10*s.*: Revenue Act, 1903, s. 7; Highmore, 4th ed., 237. This deed should be executed in duplicate, one part to be retained by the mortgagees and the other by the vendor. Stamp.

Principal sum remains owing.

(2) The said principal sum of £—— and no more remains owing, but all interest thereon has been paid up to the date of these presents:

Sale of equity of redemption.

(3) The property comprised in the Principal Deed has been lately sold by the Vendor to the Purchaser and has been conveyed (subject to the principal Deed) to the Purchaser in fee simple [*or* has been assigned (subject to the Principal Deed) to the Purchaser for the residue of the head term expectant on the derivative term created by the Principal Deed] by a Conveyance bearing even date with but executed before these presents, and made between the Vendor of the one part and the Purchaser of the other part:

Agreement for a substituted covenant.

(4) It has been agreed that the Purchaser shall enter into the covenant hereinafter contained and that the same shall be accepted by the Mortgagees in substitution for the covenant by the Vendor for payment of the said principal money and interest contained in the Principal Deed:

NOW THIS DEED WITNESSETH as follows:—

Covenant by Purchaser with Mortgagees to pay principal and interest.

1. In pursuance of the said agreement and in consideration of the premises the Purchaser hereby covenants with the Mortgagees (*e*) to pay to them on the —— day of —— next (*f*) the principal sum of £——, secured by the Principal Deed, with interest thereon at the rate of £— per cent. per annum from the date of these presents And also, so long after that day as any principal money remains due under the Principal Deed to pay to them interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year (*the same half-yearly days as those fixed by the Mortgage*).

Release by Mortgagees of Vendor's covenant.

2. In consideration of the foregoing covenant the Mortgagees hereby release the Vendor and his estate and effects from all liability under his covenant contained in the Principal Deed for payment of the principal money and interest thereby secured.

In witness, &c.

Construction of covenants.

(*e*) If there are two or more mortgagees this will operate as a covenant with them jointly and separately with each of them: L. P. Act, 1925, s. 81.

(*f*) This will be the next half-yearly day fixed by the mortgage for payment of interest.

Registered land.

As to registered land, the covenant will be in the same general form. It does not require registration.

No. III.

DEED OF COVENANT *by the* PURCHASER *of an* EQUITY OF REDEMPTION *with the* MORTGAGEES *to pay the* MORTGAGE DEBT WITHOUT *any* RELEASE *of the* MORTGAGOR'S COVENANT.(*g*)

THIS DEED OF COVENANT is made, &c., BETWEEN C. D., of, &c. (hereinafter called the Purchaser), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees) of the other part: WHEREAS:— Parties.

(1) These presents are supplemental to a Mortgage (hereinafter called the Principal Deed) dated the —— day of ——, and made between A. B. (hereinafter called the Vendor) of the one part, and the Mortgagees of the other part, being a mortgage of certain property situated at ——, by the Vendor to the Mortgagees for securing payment to them of the principal sum of £—— and interest thereon at the rate of £— per cent. per annum, which by virtue of the Law of Property Act, 1925, is now secured by a term of 3,000 years [*or if the mortgage was by assignment of a lease* by a term less by ten days than the term expressed to be assigned by the Principal Deed]: Supplemental to Mortgage.

(2) The property comprised in the Principal Deed was lately sold by the Vendor to the Purchaser and was conveyed to the Purchaser in fee simple by a Conveyance, dated, &c., but subject to the Principal Deed and the mortgage term subsisting thereunder: Conveyance of equity of redemption.

(3) The Purchaser has, at the request of the Mortgagees, agreed to enter into the covenant hereinafter contained: Agreement for new covenant.

NOW THIS DEED WITNESSETH as follows:—(*h*)

1. (*Covenant by Purchaser with Mortgagees as in last Precedent.*) Covenant by Purchaser, and proviso saving Mortgagees' right to sue on original covenant.

2. PROVIDED ALWAYS that these presents shall not operate to release the Vendor or his estate and effects from his covenants for payment of the said principal money and interest contained in the Principal Deed.

IN WITNESS, &c.

(*g*) It is assumed in this Prec. that the mortgagee calls on the purchaser to enter into the covenant, and there is no arrangement with the original mortgagor for his discharge. The stamp will be 6*d.* for every £100 secured (Alpe, 18th ed., 197); but not exceeding 10*s.*: Revenue Act, 1903, s. 7; Highmore, 4th ed., 237.

(*h*) As to registered land, the covenant will be in the same general form. It does not require registration. Registered land.

No. IV.

CONVEYANCE *of the* FEE SIMPLE *in* FREEHOLDS *on a* PURCHASE *by the* MORTGAGEES. (*Legal Estate.*)

Parties. THIS CONVEYANCE is (*i*) made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Mortgage and conversion into long term. (1) and (2) By a Mortgage (*Recite Mortgage to secure* £500 *and interest as in Form No.* 2, *Sec. I, p.* 452, *referring to the property as* certain property at ——):

Agreement for sale. (3) The principal sum of £500 and no more is still owing to the Mortgagees on the security of the recited Mortgage, but all interest thereon has been paid up to the date hereof, and the Vendor has agreed to convey to them free from incumbrances the fee simple in the property comprised in the recited Mortgage at the price of £500:

NOW THIS DEED WITNESSETH as follows:—

Conveyance to Mortgagees. 1. IN pursuance of the said agreement and in consideration of the sum of £500 now paid by the Mortgagees to the Vendor (the receipt of which sum the Vendor hereby acknowledges) and of the release hereinafter contained, the Vendor, As Beneficial Owner, hereby conveys and releases unto the Mortgagees,

Parcels. ALL the property comprised in or conveyed by the recited Mortgage.

Habendum. TO HOLD unto the Mortgagees in fee simple, discharged from all right of redemption under the recited Mortgage,(*j*) and to the intent that the said Mortgage term shall merge in the fee simple.

Stamp. (*i*) On a conveyance to a person in consideration wholly or partly of a debt due to him the debt is deemed to be the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty: Stamp Act, 1891, s. 57; Highmore, 4th ed., 169-171. Hence, the conveyance in the text should be stamped *ad valorem* on £500 (debt) and £500 (purchase-money)—£1,000. But the stamp on a voluntary conveyance under s. 74 of the the Fin. (1909-10) Act, 1910, is based on the value of the equity of redemption.

(*j*) A mortgage term cannot be kept alive after the mortgage is discharged: L. P. Act, 1925, s. 116. If the mortgage debt is kept on foot as a protection against mesne incumbrancers, it must still be taken into account and the stamp duty will be the same: Alpe, 18th ed., 126.

Registered land. In the case of registered land, Form 55 in the Rules (Transfer and Discharge) should be used, altering the consideration as follows: "In consideration of five hundred pounds (£500) paid to (the mortgagee) and of the discharge by him hereinafter contained." Add at the end a release adapted from para. 2 of the above Prec.

2. THE Mortgagees hereby release the Vendor and his estate and effects from all liability under his covenant contained in the recited Mortgage for payment of the principal money and interest thereby secured. Release of covenant.

IN WITNESS, &c.

No. V.

CONVEYANCE *of* ENFRANCHISED LAND *subject to a* MORTGAGE. (*Legal Estate.*) (*k*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) and (2) By a Mortgage dated the —— day of ——, and made between the Vendor of the one part and E. F. and G. H. (hereinafter called the Mortgagees) of the other part, the Vendor (*continue as in Form No.* 21, *Sec. I, p.* 462): Mortgage by covenant to surrender and conversion into long term.

(3) By virtue of the Law of Property Act, 1922, and of the First Schedule to the Law of Property Act, 1925, the fee simple in the property comprised in the recited mortgage became vested in the Vendor, subject to the manorial incidents and the rights of the lord of the said manor to mines minerals sporting and other rights reserved by the said Act of 1922, and no compensation agreement has been entered into nor has any notice been served to ascertain the compensation payable in respect of the said manorial incidents: The vesting of the fee simple in the Vendor.

(4) The said sum of £—— and no more is still owing to the Mortgagees, but all interest thereon has been paid up to the date hereof. State of mortgage debt.

(*k*) For the purposes of this conveyance it is immaterial whether a covenant to surrender or a conditional surrender was taken or the mortgagees were admitted; in any case they will acquire a legal mortgage term as the security was not a mere charge. Again the title of the vendor on the court rolls is immaterial; if he was absolutely and beneficially entitled to the copyholds subject only to the mortgage he will acquire the fee simple in the enfranchised land.

Until the manorial incidents are extinguished a conveyance of the land must be sent to the steward within six months to be endorsed by the steward, otherwise the legal estate will not pass (L. P. Act, 1922, s. 129); Endorsement by steward.

Agreement for sale.

(5) The Vendor has agreed to sell to the Purchaser the property hereinafter described and the fee simple thereof in possession subject to the manorial incidents and the aforesaid rights of the lord and to the recited Mortgage and the principal money and interest thereby secured, but otherwise free from incumbrances at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance subject to the manorial incidents.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

All those, &c. (*with an exception of the lord's minerals and sporting rights*),(*l*)

Habendum.

To hold (except as aforesaid) unto the Purchaser in fee simple subject to the manorial incidents reserved by the Law of Property Act, 1922, and to the said mortgage term and the principal money and interest secured by the recited Mortgage.(*l*)

Covenant by Purchaser to pay the debt and interest, and for indemnity.

2. The Purchaser hereby covenants with the Vendor (*continue as in paragraph 2 of Prec. I of this Group, p.* 720, *supra*).

[3. *Add certificate as to purchase-money if the amount paid plus the mortgage debt does not exceed* £500, *Form No.* 8, *Sec. III, p.* 483.]

In witness, &c.

Payment of fines, &c.

the customary payments will then be made as if the land had not been enfranchised. For the purpose of ascertaining what fines, &c., are payable it is material to see what admissions have been made on the rolls.

Variations if manorial incidents have been extinguished.

(*l*) If a compensation agreement has been made and the lord has voluntarily sold his minerals and sporting rights these will not be excepted out of the parcels. If a compensation rentcharge has been created this will be referred to in the habendum in place of the manorial incidents. If the compensation has been paid in a gross sum the habendum will be in the form used for ordinary freeholds.

If a compensation agreement has been made or notice to ascertain the compensation has been served this must be recited.

Registered land.

As to registered land, in the case supposed the mortgage will necessarily be an incumbrance prior to first registration but the form of the conveyance will be the same whether it was prior or subsequent to that date. The manorial incidents will be "overriding interests" (L. R. Act, 1925, s. 70, (1) (*j*)), but may appear on the register. If a compensation rentcharge has been created it will appear on the register. A compensation agreement or notice to ascertain compensation would authorise any entry made for protecting the manorial incidents to be discharged or varied. In all cases the conveyance will

No. VI.

ASSIGNMENT *of* LEASEHOLDS *subject to a* MORTGAGE *by* SUB-DEMISE. VARIATIONS *where the* MORTGAGE *was originally by* ASSIGNMENT *or by* LEGAL CHARGE. (*Legal Estate.*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) By a Lease dated the —— day of ——, and made between K. L. of the one part and the Vendor of the other part (*Form No.* 28, *Sec. I, p.* 468, *supra, defining the term as the* Head Term): Lease.

(2) By a Mortgage dated the —— day of ——, and made between the Vendor of the one part and E. F. and G. H. (hereinafter called the Mortgagees) of the other part, the property comprised in the recited Lease was demised by the Vendor to the Mortgagees for the residue of the Head Term (except the last three days thereof) by way of mortgage for securing payment to the Mortgagees of the principal sum of £——, with interest thereon as therein mentioned: (*m*) Mortgage by sub-demise.

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be effected by a plain transfer (in Form 19 in the Rules) without recitals or any reference to the mortgage or manorial incidents or rentcharge or agreement or notice. The words "As Beneficial Owner" may be inserted in the form of transfer (Rule 76) and if inserted will take effect as if the transfer were expressly made subject to the mortgage and manorial incidents or rentcharge, agreement or notice. Add a covenant for indemnity adapted from para. 2 in Precedent I of this Group and Certificate in Form No. 8, Section III, p. 483, if the amount paid plus the mortgage money does not exceed £500.

(*m*) Even if the mortgage by sub-demise contained a trust of the head term or an irrevocable power of attorney to assign it, those facts need not be mentioned, for it is assumed in this Prec. that the mortgage included the whole of the property comprised in the lease. It is only where part of the land comprised in a lease is mortgaged and the rent, if any, has not been apportioned that an irrevocable power of attorney (L. P. Act, 1925, ss. 126 and 128) will be required in the mortgage by sub-demise or legal charge; in all other cases the mortgagee is given power on a sale or when the right of redemption is barred to convey or acquire the head term: *ib.*, s. 89. Trust of head term and irrevocable power of attorney.

As to registered land, the assignment will be effected by a transfer without recitals (Form 19 in the Rules) inserting "As Beneficial Owner" (as to which see the preceding note as to registered land), and adding the certificate in Form 8, Section III, p. 483, if the purchase-money plus the mortgage debt does not exceed £500. Registered land.

Variations where the mortgage was by assignment.

[*or* (2) The property comprised in the recited Lease was assigned by the Vendor to the Mortgagees for the residue of the Head Term by way of mortgage for securing payment to the Mortgagees of the principal sum of £——, with interest thereon as therein mentioned: But by virtue of the Law of Property Act, 1925, a sub-term for the residue of the Head Term (except the last ten days) became vested in the Mortgagees subject to cesser on payment of the said principal money and interest; and the Head Term became vested in the Vendor subject to the said derivative term :]

Variation where there was a charge by way of legal mortgage.

[*or* (2) By a Legal Charge, dated, &c., and made between the Vendor of the one part, and E. F., and G. H. (hereinafter called the Mortgagees) of the other part, the property comprised in the recited Lease was charged by way of legal mortgage with the payment to the Mortgagees of the principal sum of £——, and interest thereon as therein mentioned :]

State of mortgage debt.

(3) The said principal sum of £—— and no more is still owing to the Mortgagees upon the security of the recited Mortgage [Legal Charge] but all interest thereon has been paid up to the date hereof :

Agreement for sale.

(4) The Vendor has agreed to sell to the Purchaser the property comprised in the recited Lease for the residue of the Head Term, subject to the recited Mortgage [Legal Charge] at the price of £——:

NOW THIS DEED WITNESSETH as follows :—

Assignment.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser,

Parcels.

All the premises comprised in and demised by the recited Lease,

Habendum.

To hold unto the Purchaser for the residue of the Head Term at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed, but subject to the recited Mortgage [Legal Charge] and to the principal money and interest thereby secured.

Covenants to pay rent, mortgage debt and

2. The Purchaser hereby covenants with the Vendor that the Purchaser or the persons deriving title under him will pay the

said principal sum of £—— and all interest henceforth to become due under the recited Mortgage [Legal Charge], and also all rent becoming due under the recited Lease, and will observe and perform all the covenants and conditions therein contained and henceforth on the part of the lessee to be observed and performed, and also all the covenants and conditions contained in the recited Mortgage [Legal Charge] And also will save harmless and keep indemnified the Vendor and his estate and effects from and against all proceedings, costs, claims and demands on account of any omission to pay the said principal sum or interest or the said rent or any breach of any of the covenants and conditions contained in the recited Mortgage [Legal Charge] or Lease or either of them.

interest, and for indemnity.

[3. *Add Form No.* 8, *p.* 483, *if the purchase-money plus the mortgage debt does not exceed* £500.]

IN WITNESS, &c.(*n*)

(*n*) In former editions Precedents were given of conveyances of land subject to but indemnified against jointures, portions and other family charges or powers of charging, and of deeds of indemnity in regard to such charges or powers of charging; but as explained in the notes to Prec. No. I of this Group such conveyances are no longer permissible, hence as respects purchasers of land such deeds of indemnity will no longer be given. Further than that, if an equitable charge has been created for money's worth this can also be overreached by the estate owner of the legal estate affected, either by a conveyance on trust for sale *ad hoc* under L. P. Act, 1925, s. 2 (2); or a settlement *ad hoc* under S. L. Act, 1925, s. 21. Only if the vendor purports to sell free therefrom will the purchaser be able under L. P. Act, 1925, s. 42 (1), to require a settlement or trust for sale to be created, for it does not come within the S. L. Act till a settlement is made under s. 21.

Conveyances subject to but indemnified against family charges; and Deeds of Indemnity against family charges.

Overreaching charges created for money's worth.

Thus a vendor can sell subject to an equitable charge created for money's worth (not being a charge arising under a trust for sale or a settlement) or a mortgage by deposit (though this would be unusual), or a restrictive covenant, or an equitable easement, or an "estate contract," or any equitable interest protected by registration under the L. C. Act, 1925, not being an annuity within Part II of that Act, or a limited owner's charge or a general equitable charge, for (save for an equitable charge created for money's worth) these are not matters which can be overreached under L. P. Act, 1925, s. 2 (see sub-s. 3) or under S. L. Act, 1925, s. 21 (see sub-s. 2), or under s. 72 of that Act.

What equitable interests a Vendor can sell subject to.

But if a vendor does sell free from an equitable interest protected by registration under the L. C. Act, 1925, which cannot be overreached, the purchaser is entitled to require the registration to be cancelled or to have the equitable interest released: L. P. Act, 1925, s. 43. If this cannot be arranged the right to rescind the contract is kept open: *ib.*

Sale free from an equitable interest which cannot be overreached.

As to shifting incumbrances: S. L. Act, 1925, s. 69; as to charges by way of additional security or for consolidating securities: *ib.*, s. 70; and as to substituting securities: *ib.*, s. 82.

Shifting incumbrances.

GROUP B.—GRANTS AND RESERVATIONS OF AND CONVEYANCES SUBJECT TO EASEMENTS.(a)

No. I.

GRANT *of a* RIGHT *of* WAY.(b) (*Legal Estate.*)

Parties.

THIS GRANT is (c) made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Seisin of Vendor of servient tenement.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property situated in the Parish of ——, in the County of ——, and more particularly delineated on the plan drawn on these presents and thereon coloured pink, including the road over the same lands shown on the said plan and thereon coloured brown:

Seisin of Purchaser of dominant tenement.

(2) The Purchaser is seised in fee simple in possession free from incumbrances (d) of the lands and buildings adjoining the last-mentioned property, and delineated on the plan hereto and thereon coloured green:

Agreement to grant right of way.

(3) The Vendor has agreed to grant to the Purchaser a right of way in manner hereinafter appearing over the said road at the price of £——:

Registered land.

(a) All the Precedents in this Group can be easily adapted to registered land. Easements are "overriding interests" and are protected without express mention on the register, but notice of them can be registered and this should be done, see L. R. Act, 1925, s. 70. The grant of an easement is among the statutory powers of the registered proprietor: L. R. Act, 1925, ss. 18 and 21. When the proprietor grants an easement the purchaser must register his title thereto, the heading to the grant should be the same as for an ordinary transfer.

Legal and equitable easements.

(b) A legal easement (*i.e.*, held for an estate equivalent to a fee simple or term of years absolute) must be appurtenant to land (L. P. Act, 1925, s. 187); but the provisions of that Act, relating to undivided shares in land, do not prevent an easement being held in common: *ib.* All easements in gross are treated as being on the same footing as personal licences, and can only take effect as equitable easements. Legal easements may be reserved under s. 65.

Rights of way appurtenant and in gross.

Rights of way are either in gross or appurtenant. A right of way in gross cannot be assigned; a right of way appurtenant to any particular land must be connected with the use and enjoyment of that land, and cannot be granted for purposes wholly unconnected with it: *Ackroyd* v. *Smith* (1850), 10 C. B. 164; 19 L. J. C. P. 315; see also *Thorpe* v. *Brumfitt* (1873), L. R. 8 Ch. 650; *North British Ry. Co.* v. *Park Yard Co.* [1898], A. C., at p. 653; *Milner's Safe Co.* v. *G. N. & City Ry. Co.* [1907], 1 Ch. 208; 76 L. J. Ch. 99.

Notice of grant.

The purchaser of an easement is entitled to have notice of the grant indorsed or annexed to one of the title deeds retained by the Vendor (L. P. Act, 1925, s. 200; see 56 Sol. J. 236–8); but this does not do away with the necessity for registering a land charge to protect an equitable easement.

Stamps.

(c) Stamp *ad valorem* as on a conveyance on sale. If the consideration is under £500, Form No. 8, Sec. III, p. 483, should be used to avoid the double duties imposed by the Fin. (1909–10) Act, 1910, s. 73.

(d) The grant should be made to the person having the legal estate.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid to the Vendor by the Purchaser (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby grants unto the Purchaser in fee simple

Grant of right of way.(e)

Full right and liberty (*Form No.* 7, *Sec. II*, *p.* 474).

[2. The said road shall be used and enjoyed by the Purchaser and the persons deriving title under him in common with the Vendor and the persons deriving title under him, and the costs of keeping the same in good and sufficient repair shall be borne by them and the persons respectively deriving title under them in moieties [*or* in proportion to their respective user of the same, such proportion to be ascertained in case of difference by arbitration under the provisions of the Arbitration Act, 1889].]

[Vendor and Purchaser to bear costs of repairs in equal proportions or in proportion to user.]

[*or* 2. If the Vendor or the persons deriving title under him shall use the said road in common with the Purchaser or the persons deriving title under him, then and in such case the Vendor and the persons deriving title under him shall contribute a fair proportion of the costs incurred in keeping the same in repair, such proportion to be ascertained in case of difference by arbitration under the Arbitration Act, 1889.]

[Vendor to pay proportion of repairing expenses if he uses the road.]

3. The Vendor hereby acknowledges, &c. (*Form No.* 4, *Sec. III*, *p.* 480).

Acknowledgment and undertaking.

[4. *Add Form No.* 8, *p.* 483, *if the consideration is under* £500.]

In witness, &c.

No. II.

RELEASE *of a* Right of Way *by Indorsement on the last* Precedent. (*Legal Estate.*)

THIS RELEASE is made, &c., Between the within-named C. D. (hereinafter called the Grantee), of the one part, and the within-named A. B. (hereinafter called the Grantor), of the other part: Whereas:—

Parties.

(1) The Grantee is still seised in fee simple of the land coloured green on the plan drawn on the within-written Deed with the right of way thereby granted and the Grantor is still seised in fee simple of the lands coloured pink and brown on the said plan:

Seisin of dominant and servient tenements respectively.

(e) If the road is to be used in common with other persons, see Form No. 6, Sec. II, p. 473. The grantor is under no liability to keep the road in repair: *Duncan* v. *Louch* (1845), 6 Q. B. 909; 14 L. J. Q. B. 187; Gale, 10th ed., 437, *et seq.* The variations in the text in square brackets are intended to meet the case where the grantor has expressly agreed to bear part of the expenses.

Repairs of road.

Agreement for release.

(2) The Grantee has agreed in consideration of the sum of £—— to release the said right of way in the manner hereinafter appearing:

Release of right of way.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Grantee, As Beneficial Owner, hereby releases unto the Grantor in fee simple,

Parcels.

ALL THAT the right of way granted by the within-written Deed,

TO THE INTENT that the same shall forthwith cease and be extinguished. [*Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.(*f*)

No. III.

CONVEYANCE *of* FREEHOLD *land with a* HOUSE *recently erected and with a* RIGHT OF WAY *in* COMMON *with occupiers of* OTHER HOUSES.(*g*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

Seisin of Vendor and agreement for sale.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described and also of the private road hereinafter mentioned, and has agreed to sell the said property together with a right of way over the said road, to the Purchaser in fee simple free from incumbrances at the price of £——:

Conveyance of land right of way.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt, &c.), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

FIRST, ALL THAT (*Form No.* 6, *Sec. II*, *p.* 473, *which includes the grant of a right of way subject to the liability of the Purchaser to pay a proportion of the repairing expenses. If the right of way is already appurtenant, see variation to the same Form*),

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Registered land.

(*f*) As to registered land see the note at the head of this Group. The release can be noted on the register, rr. 201 to 203. If the easement has been registered the title thereto should be closed.

Powers of mortgagees in regard to easements.

(*g*) Where a mortgage deed is executed after 1911, a mortgagee selling under his power of sale may convey any part of the mortgaged property with or without a grant or reservation of an easement: L. P. Act, 1925, s. 101 (2) (ii), *cf. Born* v. *Turner* [1900], 2 Ch. 211; 69 L. J. Ch. 593.

Powers for tenants for life, &c., to grant or reserve easements.

For powers for a tenant for life to grant or reserve easements: S. L. Act, 1925, ss. 38, 49, 50; these powers can be exercised by trustees for sale: L. P. Act, 1925, s. 28; or by personal representatives: Ad. of E. Act, 1925, s. 39.

TO HOLD unto the Purchaser in fee simple.(*h*) Habendum.

[2 and 3. *Add acknowledgment and undertaking, Form No.* 4, *Sec. III, p.* 480, *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

No. IV.

CONVEYANCE *of* FREEHOLD LAND *reserving a right of way over it to the* VENDOR *and subject thereto to the* PURCHASER *in fee simple.*(*i*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described and delineated on the plan hereto and thereon coloured pink and brown, and also of the adjoining land shown on the said plan and thereon coloured green: Seisin of Vendor of both property conveyed and retained.

(*h*) If desired, an express covenant by the purchaser to repair may be added in the following form, but being a positive covenant the burden will not run with the land, see *Haywood* v. *Brunswick Building Society* (1881), 8 Q. B. D. 403; 51 L. J. Q. B. 73; *Re Nisbet and Potts* [1905], 1 Ch., at p. 397; 74 L. J. Ch. 310; [1906], 1 Ch. 386; 75 L. J. Ch. 238:—

2. THE Purchaser hereby covenants with the Vendor that until the said road shall become a public highway repairable by the inhabitants at large the Purchaser and the persons deriving title under him will from time to time pay a fair and reasonable proportion of the expense of keeping the same in repair, and if any difference shall arise as to the amount to be so paid, the same shall be referred to the district surveyor of the Urban [*or* Rural] District Council of ——, or his nominee, but if he shall decline to act, then to some other person as sole arbitrator under the provisions of the Arbitration Act, 1889. Covenant by grantee to pay proportion of expense of repairing road.

As to registered land. If desired, notice of the easement may be entered on the register of the grantor's title under L. R. Act, 1925, s. 70 (3). The benefit of the easement will be included in the description of the registered land. Registered land.

(*i*) See L. P. Act, 1925, s. 65, which, having regard to the repeal of the Statute of Uses, takes the place of Conv. Act, 1881, s. 62; see also L. P. Act, 1925, 5th Sch., Form No. 6; the reservation need not of necessity be in favour of the grantor (*ib.*, s. 65); the purchaser need not execute, but the deed should either be executed in duplicate or the purchaser should give a separate acknowledgment of the vendor's right to production. Reservation of legal easements.

As to registered land. If desired, notice of the easement may be entered against the purchaser's title: L. R. Act, 1925, s. 70 (3), and the benefit of it should be added to the description of the land in the vendor's title. Registered land.

Agreement for sale.

(2) The Vendor has agreed to sell to the Purchaser the property coloured pink and brown on the said plan and the fee simple thereof in possession free from incumbrances, but subject to the right of way hereinafter reserved over the land coloured brown on the said plan at the price of £—— :

Conveyance reserving a right of way.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt, &c.), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

All that piece of land situated in the Parish of——, in the County of——, and known as —— Field, containing —a. —r. —p. or thereabouts, and more particularly delineated on the plan hereto and thereon coloured pink and brown,

Reservation.

Reserving nevertheless out of the premises unto the Vendor in fee simple or other the owner or owners for the time being of the land coloured green on the plan hereto and the tenants and all persons authorised by the Vendor or the persons deriving title under him

Full right and liberty (in common with the Purchaser and the persons deriving title under him and the persons authorised by him or them) from time to time and at all times hereafter and for all purposes to pass and repass with or without horses, cattle or other animals, carts, carriages, motor-cars and other vehicles, over and along the road coloured brown on the plan hereto,

Habendum.

To hold (reserved as aforesaid) unto the Purchaser in fee simple.

[2 and 3. *Add acknowledgment and undertaking as to documents, Form No.* 4, *Sec. III, p.* 480 ; *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.

No. V.

CONVEYANCE *of* Freehold Land *subject to a subsisting* Right of Way. (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., Between A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser) of the other part :

Seisin of Vendor subject to right of way and agreement for sale.

Whereas the Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described, subject to the right of way hereinafter mentioned, and has agreed to sell

the same to the Purchaser for a like estate in possession subject as aforesaid, but otherwise free from incumbrances at the price of £——:

NOW THIS DEED WITNESSETH as follows:— Conveyance

1. In pursuance &c. (*see last Precedent*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

All that, &c. (*Forms, Sec. II, p.* 471, *et seq.*), Parcels.

To hold unto the Purchaser in fee simple Subject to the right as heretofore exercised by the owners for the time being of the adjoining lands known as the—— Estate and their tenants and the persons authorised by them to pass and repass, &c. (*see last Precedent*). Habendum. Subject to right of way.

[2 and 3. *Add acknowledgment, &c., Form No.* 4, *Sec. III, p.* 480; *also Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.

Group C.—Conveyances on Sales of Building Estates and Matters connected therewith, including Conveyances where Restrictive Covenants are imposed.(*a*)

No. I.

Conveyance *of* Freeholds *to a* Purchaser *who* covenants *not to* Build *or allow* Trees *or* Shrubs *to* exceed *a certain* Height. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., Between A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: Whereas (*Recite Vendor's seisin and agreement for sale, Form No.* 1, *Sec. I, p.* 452):

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*), and of the covenants by the Purchaser hereinafter contained, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser Conveyance.

All those, &c. (*Forms, Sec. II, p.* 471, *et seq.*), Parcels.

To hold unto the Purchaser in fee simple.(*b*) Habendum.

(*a*) All the Precedents in this Group can be easily adapted to registered land. All the matters dealt with can be introduced into the registered dispositions with which they are connected. As to restrictive covenants, see also note (*e*) to Precedent No. II in this Group. Registered land.

(*b*) When new restrictive covenants are given the land should not be expressed to be conveyed subject to them. On a sale subject to existing Restrictive covenants.

Covenant by Purchaser not to build on the land or to allow trees, &c., to grow beyond certain height.

2. For the benefit of the Vendor and his successors in title owners and occupiers of the land now belonging to the Vendor lying on the —— sides of the property hereby conveyed the Purchaser (*c*) hereby covenants with the Vendor that the Purchaser and the persons deriving title under him will not at any time hereafter erect or permit to be erected any building or wall (*d*) on the land hereby conveyed, or any part thereof, exceeding six feet in height, and will not at any time hereafter permit any trees or shrubs for the time being growing in or upon the said land to exceed ten feet in height from the ground, having regard always to the present level of the said land, and will at all times, by cutting the same or otherwise, prevent such trees and shrubs from exceeding the aforesaid height.

[3 and 4. *Add acknowledgment, &c., Form No.* 4, *Sec. III, p.* 480 *; also Form No.* 8, *Sec. III, p.* 483, *if required.*]

In witness, &c.

No. II.

Conveyance *of part of a* Building Estate. Restrictive Covenants *by* Purchaser *as to* Buildings, *&c.*(*e*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., Between A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

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restrictive covenants the purchaser is entitled to a conveyance subject only to the restrictive covenants mentioned in the contract, though he has notice of others : *Re Wallis and Barnard* [1899], 2 Ch. 515 ; 68 L. J. Ch. 753.

Form of restrictive covenants.

(*c*) It is no longer necessary for the purchaser to covenant for his assigns or to covenant with the vendor's assigns ; all that is requisite is to show what land is intended to have the benefit of the covenants : L. P. Act, 1925, ss. 78–82.

Registration of land charge.

A restrictive covenant (not being a covenant between a lessor and lessee) made after 1925, must (except as to registered land) be protected by the registration of a land charge ; notice alone is not sufficient to support it : L. C. Act, 1925, ss. 10, Class D (ii), 13. As to the modification or discharge of a restrictive covenant : L. P. Act, 1925, s. 84. For the power for a tenant for life to release a restrictive covenant : S. L. Act, 1925, s. 58 (2) ; this power is also exercisable by trustees for sale and personal representatives.

Release of restrictive covenants.

Registered land.

As to registered land : L. R. Act, 1925, ss. 40 and 50 ; and see note to next Prec.

(*d*) See *Bowes* v. *Law* (1870), L. R. 9 Eq. 636 ; 39 L. J. Ch. 483 ; *Paddington Borough Council* v. *A.-G.* [1906], A. C. 1 ; 75 L. J. Ch. 4 ; *Foster* v. *Fraser* [1893], 3 Ch. 158 ; 63 L. J. Ch. 91 ; *Nussey* v. *Prov. Bill Posting Co.* [1909], 1 Ch. 734 ; 78 L. J. Ch. 539.

Registered land.

(*e*) See Dissertation, pp. 199-205, as to restrictive covenants and building schemes. If the title to the land is registered application must be made under L. R. Act, 1925, s. 50, for entry of notice on the register, this notice, when

WHEREAS (*Form No.* 1, *Sec. I, p.* 452, *adding* and the Purchaser has agreed to enter into the covenants hereinafter contained) : Seisin of Vendor and agreement for sale.

NOW THIS DEED WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby [grants and] conveys unto the Purchaser, Conveyance.

[FIRST] ALL THAT piece of land situated, &c., and containing —— or thereabouts, and more particularly delineated on the plan hereto and thereon coloured ——, which piece of land forms part of the —— Estate of the Vendor : Parcels.

[AND SECONDLY, FULL right and liberty in fee simple (*f*) for the Purchaser, and his successors in title, to use the road on which the said piece of land abuts and the sewers under the same (in common with the Vendor and his successors in title and all other persons to whom a like right has been or may hereafter be granted), but subject to the liability of the Purchaser and the persons deriving title under him to pay a rateable proportion according to frontage, of the expense of keeping the said road and sewers in repair until the same shall become a public highway repairable by the inhabitants at large], Grant of right of way and right to use sewers.

TO HOLD unto the Purchaser in fee simple.

2. FOR the benefit of, &c. (*Form No.* 6, *paragraph A, Sec. III,* p. 481, *adding power for the Vendor to vary the restrictions and proviso that the Purchaser shall not be liable for breaches of covenant after he has parted with the land, provisos B and C of the same Form*). Covenant by Purchaser as to restrictions and stipulations in first Schedule, &c.

3. PROVIDED that the Purchaser and his successors in title, shall not be entitled to any right of access of light or air to Purchaser not to be entitled to rights of light and air

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practicable, will also refer to the land to be benefited (*ib.*, sub-s. 4) ; so as to give effect to *Wille* v. *St. John* (No. 1) [1910], 1 Ch. 325 ; 79 L. J. Ch. 239. The registered proprietor has power to enter into or release restrictive covenants (*ib.*, s. 40) ; the covenants can be entered into in the instrument of transfer, for which a Form, No. 43, is provided by the rules ; they must be so framed as to be clear and intelligible when placed on the register of the land affected without reference to any document or matter of law or fact which does not appear thereon. The instrument in this case should be executed in duplicate : A certified copy (for attachment to the land certificate) must also be lodged in the registry : L. R. R. 1925, r. 135. Registration of the burden of a restrictive covenant under s. 50 takes the place of registration of a land charge.

(*f*) See also Form No. 6, Sec. II, p. 473, *supra.*

restricting user of the rest of the estate.(*g*)

buildings to be erected on the land hereby conveyed which would restrict or interfere with the free user of any other part of the said estate for building or any other purpose.

Proviso that benefit of covenants shall not pass to future Purchasers of other plots, unless so declared in conveyance.

4. PROVIDED ALSO, that if and whenever the Vendor, or his successors in title, shall sell a plot of land (being a part but not the whole of the said estate then remaining vested in him or them), the right to enforce the covenants hereinbefore contained in respect of the plot of land so sold shall not pass to the Purchaser thereof unless it shall be expressly assigned or declared in the conveyance that it is intended to pass thereby.(*h*)

Acknowledgment, &c., as to documents.

5 and 6. THE Vendor hereby (*Form No.* 4, *Sec. III*, *p.* 480, *as to documents in Second Schedule*). [*Add Form No.* 8, *Sec. III*, *p.* 483, *if required.*]

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of restrictions and stipulations.

1. No building shall be erected on the said plot of land other than a private dwelling-house (*i*) or flats with suitable offices and outbuildings, and no trade or business (*j*) of any kind shall be carried on upon the said plot.

2. Not more than one dwelling-house (whether or not adapted for use as flats) shall be erected on the said plot, which shall in labour and materials at lowest current market prices cost not less than £——.(*k*)

(*g*) See *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31 ; 48 L. J. Ch. 853 ; *May* v. *Belleville* [1905], 2 Ch. 605 ; 74 L. J. Ch. 678. This proviso is only added where the contract provides for its insertion in the conveyance.

(*h*) This proviso is suggested in order to prevent any question as to the devolution of the benefit of the covenants on purchasers of other plots. It is assumed in this case that it would be inconvenient for the vendor to deprive himself of the right to release or dispense with the covenant.

"Boarding-house." "Club."

(*i*) A boarding-house is not a private residence (*Hobson* v. *Tulloch* [1898], 1 Ch. 424 ; 67 L. J. Ch. 205); nor is a club : *McNair* v. *Baker* [1904], 1 K. B. 208 ; 73 L. J. K. B. 120.

Trade or business.

(*j*) As to what constitutes a breach of this covenant, see *Rolls* v. *Miller* (home for working girls) (1884), 27 Ch. D. 71 ; 53 L. J. Ch. 682 ; *Tod-Heatly* v. *Benham* (hospital) (1889), 40 Ch. D. 80 ; 58 L. J. Ch. 83 ; *Wauton* v. *Coppard* (boys' school) [1899], 1 Ch. 92 ; 68 L. J. Ch. 8 ; *Frost* v. *King Ed. VII Welsh Memorial Assn., &c.* (Hospital for tuberculosis) [1918], 2 Ch. 180 ; 87 L. J. Ch. 561 ; *Ten Bosch* v. *Cohen*, see 48 Sol. J. 240.

Covenant not to erect more than one house on one plot.

Flats.

(*k*) Unless there is some context which cuts down or alters the popular interpretation of the word "house," a building containing several residential flats constitutes only one "house" within the meaning of the word in a covenant not to erect more than a certain number of houses : *Kimber* v. *Admans* [1900], 1 Ch. 412 ; 69 L. J. Ch. 296. On the other hand, the erection of residential flats is a breach of a covenant not to erect more than one dwelling-house to be used as a private dwelling-house only : *Rogers* v. *Hosegood* [1900],

3. No buildings shall be placed nearer to the road in front of the said plot than is indicated by the building line shown on the said plan except porches and bay windows.

(*Add any other conditions which may be agreed on.*)

THE SECOND SCHEDULE.

Particulars of documents retained in the custody of the Vendor.

No. III.

CONVEYANCE *of* FREEHOLD LAND, *part of* ONE SECTION *of an* ESTATE, *under development for* BUILDING PURPOSES. RESTRICTIVE COVENANTS *and* STIPULATIONS *imposed so as only to affect the* PARTICULAR SECTION *of the* ESTATE.(*l*) FULL *forms of* BUILDING RESTRICTIONS. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) The Vendor is seised of the plot of land described in the First Schedule hereto (being part of Section A of his —— Estate, in the Parish of ——, in the County of ——) for an estate in fee simple in possession free from incumbrances, and has agreed to sell the said plot to the Purchaser for a like estate in possession free from incumbrances at the price of £——: Seisin of Vendor.

(2) The restrictions and stipulations contained in the Second Schedule hereto are intended to constitute a building scheme only so far as regards Section A of the said estate (which section is shown on the plan hereto and thereon edged blue, and is hereinafter called Section A), and the Purchaser has agreed to enter into the covenants hereinafter contained: Agreement by Purchaser to enter into restrictive covenants which are to apply generally to Section A.

2 Ch. 388; 69 L. J. Ch. 652. A building structurally divided into two tenements on different floors with no internal communication constitutes two houses within the meaning of a covenant not to erect more than one house on the site: *Grant* v. *Langston* [1900], A. C. 383, 399; 69 L. J. P. C. 66; *Ilford Park Estates* v. *Jacobs* [1903], 2 Ch. 522; 72 L. J. Ch. 699 (distinguishing *Kimber* v. *Admans, supra*); see also *Weatheritt* v. *Cantlay* [1901], 2 K. B. 285; 70 L. J. K. B. 799; *Nicholls* v. *Malim* [1906], 1 K. B. 272; 75 L. J. K. B. 140; *Western* v. *Kensington Assessment Committee* [1908], 1 K. B. 811; 77 L. J. K. B. 328; *St. Marylebone Assessment Committee* v. *C. L. Properties Ld.* [1914], A. C. 870; 83 L. J. K. B. 1251. A house capable of being inhabited was held to include a schoolhouse: *Reckitt* v. *Cody* [1920], 2 Ch. 452.

(*l*) See Dissertation, pp. 199-205, as to restrictive covenants and building schemes. Also, as to registered land, note to the preceding Precedent. Notice of restrictive covenants indorsed on title deed.

Where the vendor imposes any restrictions on an estate a purchaser is entitled to have notice thereof indorsed on or annexed to one of the title deeds retained by the vendor: L. P. Act, 1925, s. 200; but this does not take the place of the registration of a land charge to protect restrictive covenants.

NOW THIS DEED WITNESSETH as follows :—

Conveyance of the plot described in the First Schedule, which includes rights of way and rights to use sewers.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt, &c.), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

All and singular the lands described in the First Schedule hereto,

Together with the right to enforce, for the benefit of the plot of land hereby conveyed, all covenants entered into by Purchasers of other plots forming part of Section A for the observance of the restrictions and stipulations mentioned in the Second Schedule hereto,

To hold unto the Purchaser in fee simple.

Purchaser not to be entitled to rights of light and air restricting user of the rest of the estate.

2. Provided that the Purchaser, and his successors in title, shall not be entitled, &c. (*as in Clause* 3 *of last Precedent*).

Covenants by Purchaser.

3. For the benefit of the owners, occupiers, and tenants for the time being of the remainder of Section A or of any part thereof, the Purchaser hereby covenants with the Vendor that the Purchaser and the persons deriving title under him will at all times hereafter duly perform and observe all and singular the restrictive and other covenants and stipulations mentioned in the Second Schedule hereto [so far as they are applicable to the land hereby conveyed (*m*)], but so, nevertheless, that this covenant shall, as regards any restrictive provision, be binding only upon the Purchaser and the persons deriving title under him during the period of his or their respective ownership of any interest in the land hereby conveyed.

Restrictions to affect Section A only.

4. Provided that the said restrictive covenants and stipulations shall not, nor shall any of them, be deemed to affect any portion of the said estate (whether already agreed to be sold, demised, or otherwise disposed of or not) other than Section A or any other land of the Vendor, and accordingly the Vendor and the persons deriving title under him may use, dispose of, or otherwise deal with the remainder of the said estate or any part thereof not included in Section A (whether already agreed to be sold, demised, or disposed of or not) or any other land except Section A either subject to restrictive covenants and stipulations corresponding with or different from those mentioned in the Second Schedule hereto or without any restrictive covenants or stipulations whatsoever.

(*m*) Possibly some of the general conditions imposed on the section may not be applicable to the particular plot.

5 and 6. THE Vendor hereby acknowledges the right of the Purchaser (*Form No. 4, Sec. III, p. 480, as to documents in the third Schedule*). [*Add Form No. 8, Sec. III, p. 483, if required.*] Acknowledgment and undertaking.

IN WITNESS, &c.

THE FIRST SCHEDULE. Schedule of property.

Particulars of the property hereby conveyed.

ALL THAT piece of land, having a frontage of —— or thereabouts to ——, and a depth of —— or thereabouts on the —— side thereof, and a depth of —— or thereabouts on the —— side thereof, being plot No. — on Section A of the Vendor's —— Estate, situated at ——, in the County of —— and which said piece of land is delineated on the plan hereto and thereon coloured pink.(*n*) Description of plot conveyed.

TOGETHER with full right and liberty in fee simple for the Purchaser the owners and occupiers for the time being of the property hereby conveyed, or of any part thereof (in common with the Vendor and all other persons who have or may hereafter have the like right) from time to time and at all times hereafter to use the roads and footways coloured yellow on the plan hereto, but as regards the footways thereof for persons on foot only, and as regards the carriageways thereof with or without carts, carriages, motor-cars, vehicles, horses and other animals.(*o*) Grant of right of way.

AND TOGETHER with full right in fee simple for the Purchaser, and the owners and occupiers as aforesaid (subject to the approval of the Local Authority), to use the sewers now laid under the said roads and intended to be used as public sewers and to make connexions under the said roads with the said sewers, the persons exercising this right making good all disturbances and damage occasioned with all due despatch. Right to use sewers.

THE SECOND SCHEDULE.(*p*) Schedule of restrictions and stipulations.

Particulars of restrictive covenants and stipulations applicable to Section A.

NOTE.—In this Schedule the shortest road frontage of each plot is "the front," and any other road frontages are "flanks."

(*n*) In the plan to this conveyance Section A will be outlined in blue, the particular plot coloured pink, and the roads to which the right of way is to extend coloured yellow.

(*o*) See *Grand Hotel Eastbourne* v. *White* [1913], 84 L. J. Ch. 938.

(*p*) This schedule is given as an example of a modern form of building stipulations. See notes to 1st Sch. to last Prec.

FENCES.

Fences.

1.—(i) EACH Purchaser shall (not later than two months after having been called upon by the Vendor so to do) erect and afterwards maintain good and suitable fences or enclosures as hereinafter described next to the roads and back and side division fences on the sides of his plot or plots marked T within the boundary on the plan hereto, but no person owning two or more contiguous plots shall be bound to erect or maintain fences between such plots.

(ii) IN default of any Purchaser erecting or maintaining any fence which he is to erect or maintain as aforesaid, the Vendor may at any time within twenty-one years from the date hereof erect, maintain, and repair the same, and in such event the Vendor shall have the same rights and remedies to recover the expenses incurred in so doing as are provided in these restrictions respecting the recovery by the Vendor of the expenses of maintaining or repairing roads or footpaths.

(iii) NO side division fences between front gardens shall, where in advance of the front building line of the plot, be formed otherwise than with suitable light iron hurdle railings or oak park pale fences with cleft pales, and the same shall be not less than two feet six inches high nor more than three feet high.

(iv) NO other side division fence and no back fences shall be formed otherwise than with close-boarded oak or deal fences, and all such fences shall be not less than five feet high nor more than five feet six inches high.

(v) THE heights of all side division fences and back fences shall be measured from the natural general level of the surface of the ground at the respective bases of such fences.

(vi) ALL deal fences shall be tarred or creosoted on both sides thereof.

(vii) NO fences or enclosures next the roads shall, where in advance of the front building line of the plot, be formed otherwise than with oak park pale fences with cleft pales (such pales to be on the side next the road) or ornamental wooden railings upon suitable red or burr brick or stone dwarf walls and with wooden gates, and such fences or enclosures and gates shall be not less than three feet high nor more than four feet high, and no such fences or enclosures (unless the Vendor otherwise permits) shall (where nearer to the road than any flank building line on the plot) be formed otherwise than with oak park pale fences with

cleft pales (such pales to be on the side next the road) or be less than five feet high or more than five feet six inches high.

(viii) THE heights of all buildings and enclosures next the roads shall be measured from the level of the footway of the adjoining road taken at the nearest point.

(ix) NO boundary fence exceeding five feet six inches high shall be erected on any part of any plot.

(x) NO Purchaser shall be entitled to require the Vendor to erect or maintain any fence or enclosure.

BUILDING LINES.

Building lines.

2.—(i) NO house shall be so erected that its principal front shall face otherwise than towards the shortest road frontage of the plot on which the same shall be erected.

(ii) THE front building lines shown on the plan hereto shall not be advanced nor (except as hereinafter mentioned) set back unless compulsorily advanced or set back by the Local Authority, and if so compulsorily advanced or set back shall be advanced or set back only to the minimum distance necessary to comply with the requirements of the Local Authority.

(iii) THE Vendor reserves the right from time to time at the request of the owner or owners or intended owner or owners for the time being of any plot or plots facing —— Road to set back, vary, or modify the front building lines of such plot or plots, but not so as to advance the same nearer to —— Road than is shown on the plan hereto.

(iv) NOTHING shall be erected nearer to the roads beyond the aforesaid front building lines or the flank building lines shown on the plan hereto except as follows :—

(a) Bay windows, balconies, porches, oriel windows, overhanging eaves, and other architectural projections none of which project more than four feet in advance of any front building line or any flank line, as the case may be.

(b) Fences or other enclosures and gates as described in clause 1 of this Schedule.

DESCRIPTION OF BUILDINGS.

Buildings.

3.—(i) NO building shall be erected upon any plot or plots except a private dwelling-house (*q*) or private dwelling-houses,

(*q*) See notes to schedule to last Prec.

(whether or not for use as flats) with or without rustic summer-houses, motor-car houses, cycle houses, and greenhouses appurtenant thereto.

(ii) ANY such rustic summer-house, motor-car house, cycle house, and greenhouse shall not exceed ten feet in height or one hundred superficial feet in area.

(iii) THE erection shall not be commenced of any summer-house, motor-car house, cycle house, or greenhouse until the house to which same is intended to be appurtenant shall have been built.

(iv) NO house shall be erected upon any of the plots Nos. — to — (both inclusive) on the plan hereto unless such house be detached or semi-detached.

(v) NO house (save a house designed for use in flats) planned or adapted for use or occupation in more than one tenement (*r*) shall be erected or allowed to remain on any plot or any portion of any plot.

(vi) EXCEPT as aforesaid, no detached outbuilding shall be erected on any plot.

(vii) THE erection shall not be commenced of any house or other outbuilding on any plot until drawings showing the intended elevations thereof have been submitted to and approved by the surveyor for the time being of the Vendor and copies deposited with him and his fee of 10*s*. 6*d*. (*s*) paid in respect of each such house or other outbuilding.

(viii) NO external front wall of any house and no external flank wall next the road of any house erected on any plot situated at the junction of two roads shall be faced externally otherwise than with red bricks, stone, hanging tiles, rough-cast plaster, half-timber work (or tarred wood ashlaring in imitation of half-timber work) or with any or all of these materials.

(ix) NO part of the roof (except flat roofs and gutters) of any house shall be covered otherwise than with red roofing tiles.

(x) NO side, back, or other wall whatsoever shall have any externally exposed part thereof faced with Fletton or Peterborough bricks or with any bricks having an appearance similar thereto.

(xi) NO house to be erected shall, with its fences and appurtenances, be allowed to remain unfinished for more than one

Surveyor's fees.

(*r*) See notes to schedule to last Prec.

(*s*) Apart from this provision the surveyor's fees for approving plans, &c., would fall on the Vendor: *Reading, &c., Society* v. *Palmer* [1912], 2 Ch. 42; 81 L. J. Ch. 454.

year after the same shall have been commenced, but this shall not prevent the subsequent erection of authorised out-buildings.

Value of Buildings.

Value of buildings.

4.—(i) No house shall be built on any plot facing —— Road of less value than £—— if such house is detached, nor of less value than £—— if such house is semi-detached.

(ii) No house shall be built on any plot facing —— Road of less value than £—— if such house is deatched, nor of less value than £—— if such house is semi-detached or in terrace.

(iii) No house shall be built facing —— Road of less value than £—— if such house is detached, nor of less value than £—— if such house is semi-detached or in terrace.

(iv) The value of a house shall be taken to be its net first cost in materials and labour of construction only, calculated at the lowest current prices and exclusive of the cost of fences or enclosures of the site and also exclusive of the cost of any summer-house, motor-car house, cycle house, or greenhouse.

As to Trades and User.

Trades and user.

5.—(i) No trade, manufacture or business shall be carried on upon any plot or plots or any part of any plot or plots, nor shall any building upon any plot or plots be erected for or used for any other purpose than that of a private dwelling-house or private dwelling-houses (whether or not for use as flats) and appurtenances thereto, but nothing herein contained shall be deemed to prevent the carrying on with the written consent of the Vendor upon any plot or plots of the practice or profession of a duly qualified physician, surgeon, or solicitor, or the placing of a brass-plate on the front door of any house.

(ii) No earth, clay, or lime shall be burnt on any plot.

(iii) No hut, shed, caravan, house on wheels, or other chattel adapted or intended for use as a sleeping apartment, nor any shows, booths, swings, roundabouts, or hoardings, nor any advertising station, shall be erected, made, placed or used, or be allowed to remain upon any plot or any part of any plot, nor shall the same be used for the storage of rubbish or building material, nor shall any fence or other enclosure be erected on any plot or any part of any plot unless and until the erection of the house to which such land is appurtenant shall have been commenced, or unless and until the surveyor for the time being of the

Vendor shall by writing have required the Purchaser to erect such fence or enclosure, and the Vendor may remove and dispose of any such erection, fence, rubbish, building material, or other thing, and for that purpose may at any time within twenty-one years from the date hereof enter upon any plot or plots upon which a breach of this stipulation shall occur, and shall not be responsible for the safe keeping of anything so removed or for the loss thereof or any damage thereto.

(iv) UNTIL any plot shall be duly fenced in and enclosed the Vendor may at any time within twenty-one years from the date hereof enter thereupon for the purpose of cutting and removing grass, weeds, crops, and any other thing which may in his opinion tend to give the Estate an untidy or neglected appearance, and the Vendor shall not be responsible for the safe keeping of anything so removed or for the loss thereof or any damage thereto.

ROADS.

Roads

6.—(i) NO portion of any plot shall be used as a road or way or as part of a road or way from or to any land adjoining or adjacent to the —— Estate.

(ii) UNTIL the road or roads and footpaths abutting on the plots shall be respectively taken over by the Local Authority, no Purchaser shall allow the same to fall into disrepair, but each Purchaser shall keep in good condition and maintain the same up to the centre thereof so far as such roads and footways abut upon his plot or plots, and in default of so doing the Vendor may maintain and repair the same, in which event each Purchaser so in default shall pay to the Vendor on demand all expenses incurred in relation to such maintenance and repair or his proportion thereof (as the case may be), the amount to be ascertained, assessed, or apportioned by the surveyor for the time being of the Vendor, and such expenses or such proportion thereof as aforesaid shall, if incurred by the Vendor within twenty-one years from the date hereof, be and the same are hereby charged in his favour on the plot or plots in respect of which such sums are payable with interest thereon at the rate of £5 per cent. per annum from the date when the same shall be so incurred.

(iii) EACH Purchaser shall also pay all sums payable to the Local Authority prior to or connected with the taking over and making up of such road or roads and the sewers thereunder

and paving or otherwise completing the footpaths so far as such road or roads and footpaths abut on the plot or plots purchased by him.

(iv) No Purchaser shall obstruct any portion of the roadway or footpath by deposit of building materials or otherwise, nor disturb the surface of any such roadway or footpath except for the purpose of making connexions to sewers, drains, or mains thereunder, and any such disturbances shall be made good by the Purchaser with all due despatch.

Excavations.

Excavations.

7. No excavations shall be made on any plot except such as may be necessary for future buildings and drains and appurtenances thereto, nor shall any gravel, flints, sand or earth be removed therefrom without the written consent of the Vendor.

Variations in Plotting.

Variations in plotting.

8. The Vendor may from time to time alter the plotting of any land comprised in Section A which for the time being remains unsold.

Registration of Restrictions.

Registration under Land Registration Act, 1925.

9. No application for registration of a proprietor under the Land Registration Act, 1925, of any plot or any part of any plot shall be made unless it contains a statement that the property in respect of which the application is made is subject to the negative restrictions and to the charges contained in this Schedule, and the same shell be duly protected by proper entries in the register.

Registration of land charge.

10. A land charge shall (save where the title to the land is registered under the said Act) be registered under the Land Charges Act, 1925, in respect of the restrictive covenants contained in this Schedule.

Interpretation.

Interpretation.

11. In this Schedule, where the context so admits,

(i) The expression "the Purchaser" includes his successors in title.

(ii) The expression "the Vendor" includes his successors in title, owners for the time being of the unsold portion of

Section A of the —— Estate, and any person to whom the benefit of the covenants by the Purchaser in these presents shall be expressly assigned.(*t*)

THE THIRD SCHEDULE.

Particulars of documents retained in the custody of the Vendor.

No. IV.

DEED *of* MUTUAL COVENANTS *by* PURCHASERS *of* LOTS *as to* BUILDINGS *and for* INDEMNITY *against a* PERPETUAL RENTCHARGE.(*u*)

Parties. THIS DEED OF COVENANT is made, &c., BETWEEN the several persons named in the Schedule hereto, and whose hands and seals are hereunto subscribed and affixed (hereinafter called the Purchasers), of the one part, and A. B., of, &c. (hereinafter called the Vendor), of the other part: WHEREAS:—

Sale by Vendor in lots. (1) The Vendor, being seised in fee simple of the freehold land situated, &c., and delineated and coloured pink on the plan hereto, lately put up the said piece of land for sale by public auction in Lots according to the said plan:

Condition that Purchasers should execute deed of covenant. (2) It was one of the conditions of the said sale that the several Purchasers should execute a deed of covenant for the observance of the restrictions and stipulations hereinafter mentioned:

Some Lots sold at auction and intention of Vendor to sell remaining Lots. (3) Some of the said Lots were sold at the said auction, and the Vendor intends to sell the remaining Lots either by public auction or private contract, as opportunities occur, subject to the like restrictions and stipulations:

Agreement to execute. (4) It is intended that as the several Lots are sold and the purchases thereof respectively are completed, the names and

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Construction. (*t*) See *Mayner* v. *Payne* [1914], 2 Ch. 555; 83 L. J. Ch. 897. It is unnecessary in documents made after 1925 to refer to "corporations" as well as "persons" or to specify "calendar" month or to provide that the singular is to include the plural or the masculine is to include the feminine, or *vice versa*, for these matters are covered by L. P. Act, 1925, s. 61.

Notice of covenants affecting Vendor's land. (*u*) See Dissertation, pp. 199-205, as to restrictive covenants and building schemes. Also, as to registered land, note to Prec. No. II in this Group. Notice of this deed should be given in each conveyance to a purchaser. The purchasers may insist on notice of the restrictive covenants affecting the land retained by the vendor being endorsed on or annexed to a title deed held by him (L. P. Act, 1925, s. 200), but this does not take the place of the registration of a land charge under L. C. Act, 1925, s. 10, Class D (ii).

Mortgagee's powers in regard to building schemes. In the case of mortgages executed after 1911, the mortgagee may on a sale create a building scheme and require the purchasers to enter into covenants: L. P. Act, 1925, s. 101 (2).

descriptions of the several Purchasers and the numbers of the Lots purchased by them respectively shall be inserted in the Schedule hereto, and that they shall respectively execute these presents opposite to their respective names in the said Schedule:

Each Purchaser covenants to observe stipulations hereinafter expressed.

NOW THIS DEED WITNESSETH that for the purpose of creating a building scheme enforceable by the owners and occupiers from time to time of the land coloured pink on the plan hereto and in consideration of the premises each of the Purchasers, as to the Lot purchased by him and with intent to bind all persons in whom the same Lot shall for the time being be vested (but so as not to be personally liable under this covenant, so far as regards covenants which are restrictive of the user of the land after he has parted with the said Lot (*v*)), hereby covenants with the others of them, and also as a separate covenant with the Vendor, that each of the Purchasers and his successors in title shall and will observe and perform the restrictions and stipulations hereinafter contained, so far as the same are or ought to be observed and performed by him or them (that is to say) :—(*w*)

Houses erected on Lots not to approach road nearer than particular distance

1. ALL houses or buildings erected on the said Lots shall be erected so that the general line of the frontages shall not approach nearer to the road than the distance indicated on the said plan by the dotted line thereon, marked "building line," which line is —— feet from the centre of the said road, except that open porticoes to the hall doors of any of the said houses may project any distance not exceeding —— feet and any bow window to any of the said houses may project any distance not exceeding —— feet from the said building line.

Number of houses.

2. NOT more than one house, and no house of less value than £——, shall be erected on any Lot.(*x*)

Trades of licensed victualler, &c., not to be carried on.

3. THE trade or business of a licensed victualler, or seller of beer, wine or spirits, shall not be carried on upon any of the said Lots (except Lot ——) or at or upon any building to be erected thereon. (*Insert any other stipulations agreed on, and see Second Schedule to last Precedent.*)

As to rentcharge charged on Lots.

4. (1) THE perpetual rentcharge of £——, which is now charged upon the said Lots, as well as on other property of the Vendor

(*v*) It is right only to limit the personal liability in the case of restrictive covenants.

(*w*) For other restrictions, see Second Schedule to the last Prec.

(*x*) See notes to First Schedule to Prec. II of this Group, p. 738, *et seq.*

under a Deed of Grant dated, &c., shall be henceforth exclusively charged on Lot ——, in exoneration of the other property affected. And the owner or owners for the time being of that Lot shall at all times keep indemnified the other Lots, and the owners and occupiers thereof for the time being, and the Vendor and his estate and effects from and against the said rent and all claims and demands on account thereof.

(2) THE rights and remedies mentioned in sub-section (1) of section one-hundred and ninety of the Law of Property Act, 1925, shall be exercisable by the respective owners for the time being of the lands exonerated from the said rentcharge.(*y*)

Stipulations to be binding on Purchasers who have completed.

5. THE above stipulations shall be binding on the several Purchasers who have completed their purchases and executed these presents, and their respective successors in title, notwithstanding that some of the Lots affected thereby may for the time being remain unsold.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals on the day and year first above written, or on the day and year set opposite to their respective signatures in the Schedule hereto.

THE SCHEDULE.

Name and Description of Purchaser.	No. of Lot.	Signature.	Seal.	Date of Signature.	Witness.

No. V.

GENERAL DEED *of* MUTUAL COVENANTS *by* PURCHASERS *and* VENDOR *on the* SALE *of* BUILDING PLOTS.(*z*)

THIS DEED OF COVENANT is made, &c., BETWEEN the several persons named in the Schedule hereto, and whose hands

Provisions for overreaching rentcharge.

Redemption of legal rentcharge.

(*y*) It is assumed that the rentcharge is not a charge arising under a settlement within S. L. Act, 1925, s. 1 (1) (v), if it were the vendor would have (*ib.*, s. 20) to make title under that Act after a vesting instrument had been executed (s. 13), as the purchasers would (*ib.*, s. 18) insist on having a legal estate conveyed to them free from the family charge: L. P. Act, 1925, s. 42. The rentcharge being either perpetual or held for a term of years absolute (*e.g.*, in the case of a compensation rentcharge) is a legal estate and cannot be overreached under L. P. Act, 1925, s. 2 (2), or S. L. Act, 1925, s. 71; but it may be redeemed under L. P. Act, 1925, s. 191.

(*z*) See Form No. 6, Sec. III, p. 481, for a power to vary a building scheme, also Dissertation, p. 199, *et seq.*, as to restrictive covenants and building schemes. Also, as to registered land, see note to Prec. II in this Group.

and seals are hereunto subscribed and affixed (hereinafter called the Purchasers), of the one part, and A. B., of, &c. (hereinafter called the Vendor), of the other part: WHEREAS:—

(1) The Vendor, being seised in fee simple of land in the Parish of ——, in the County of ——, has laid out the same for sale in plots for building purposes according to the plan hereto on which plan the plots are numbered 1 to — inclusive: Vendor has laid out land for sale in plots.

(2) Some of the plots have been sold to the Purchasers, and the Vendor intends to sell the remaining plots as opportunities offer: Some plots have been sold, intention to sell remainder.

(3) The Nos. of the plots sold as aforesaid (such Nos. corresponding to those on the said plan) are mentioned in the Schedule hereto opposite to the names of the several Purchasers thereof: Number of plots.

(4) Upon the treaty for the said sales it was agreed that the several Purchasers and the Vendor should enter into the covenants hereinafter contained: Agreement to execute.

NOW THIS DEED WITNESSETH that for the purpose of creating a building scheme as respects the land coloured —— on the plan hereto, each of the Purchasers as to the plot of land purchased by him and with intent to bind all persons in whom the same plot of land shall for the time being be vested (but not so as to be personally liable under this covenant, so far only as regards covenants which are restrictive of the user of the land,(*a*) after he has parted with the same plot), hereby covenants with the others of them, and also as a separate covenant with the Vendor: And the Vendor, as to the remaining plots of land shown on the said plan, and with intent to bind all persons Purchasers and Vendor mutually covenant to observe stipulations expressed. Land charge.

Land charges should be registered against each of the covenantors as respects the land affected by his restrictive covenants: L.C. Act, 1925, s. 10, Class D (ii). It may also be expedient that notice of this deed should be indorsed on one of the principal title deeds to prevent its being overlooked, see L. P. Act, 1925, s. 200. Had the covenants been entered into before 1926 notice would have been the material matter: *Tulk* v. *Moxhay* (1848), 2 Ph. 774; 18 L. J. Ch. 83; *Re Nisbet and Potts* [1906], 1 Ch. 386; 75 L. J. Ch. 238; *L. C. C.* v. *Allen* [1914], 3 K. B. 642; 83 L. J. K. B. 1695. In the absence of a land charge a purchaser would not be affected by the covenants. On any future sale by the vendor of any plot of land affected by covenants, the conveyance should be made expressly subject to them, *e.g.*:—

"To hold unto the Purchaser in fee simple, subject to and with the benefit of the covenants as to buildings and otherwise contained in a Deed of Covenant dated, &c., and made, &c. (*date and parties*), so far as the same affect the land hereby conveyed."

As to the modification or discharge of restrictive covenants: L. P. Act, 1925, s. 84. Mode of entering into covenants.

(*a*) It is right to limit the personal liability only in the case of restrictive covenants. The positive covenants cannot be made to run with the land:

in whom the said plots of land shall for the time being be vested (but not so as to be personally liable under this covenant so far only as regards covenants which are restrictive of the user of the land (*a*), after he has parted with the same plots respectively), hereby covenants with the Purchasers respectively that each covenanting party and his successors in title will henceforth observe and perform the stipulations hereinafter expressed so far as the same affect the said plots of land respectively (that is to say) (*Set out stipulations in numbered paragraphs ; see last Precedent and the Second Schedule to Prec. III of this Group, p.* 741, *et seq.*)

IN WITNESS, &c.

THE SCHEDULE.

(*Same as Schedule to last Precedent.*)

GROUP D.—GRANTS RESERVING PERPETUAL RENTCHARGES, CONVEYANCES SUBJECT TO EXISTING RENTCHARGES, AND CONVEYANCES AND RELEASES OF RENTCHARGES.(*b*)

No. I.

BUILDING GRANT *at a perpetual* RENTCHARGE.(*c*) COVENANTS *by* GRANTEE *to* BUILD, *and to* INSURE *and* KEEP *in* REPAIR BUILDINGS, *and other* COVENANTS *in* CONNEXION *with the* BUILDINGS.(*d*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c.

Re Nisbet and Potts [1905], 1 Ch., at p. 397 ; aff. [1906], 1 Ch. 386 ; 74 L. J. Ch. 310 ; 75 *ib* , 238 ; see Dart, 7th ed., 771 ; *Smith* v. *Colbourne* [1914], 2 Ch. 538 ; 84 L. J. Ch. 112.

As to the framework of covenants made after 1925, see L. P. Act, 1925, ss. 78-81.

Registered land. (*b*) The Precedents in this Group can be easily adapted to registered land. As to form, see r. 113. The grant of a rentcharge is within the statutory powers of a registered proprietor : L. R. Act, 1925, ss. 18 and 21. Notice of it should be entered on the register of the grantor's title under L. R. Act, 1925, s. 49 and r. 190. The grantee should also be registered as proprietor of the rent : L. R. Act, 1925, s. 2, rr. 52, 107 and 108. A transfer in consideration or partly in consideration of a rent may be in any form legally sufficient for the purpose of which the Registrar may approve : R. 107. The heading to the deed should be the same as in the case of an ordinary transfer.

Stamp duty. (*c*) Where the consideration for a conveyance on sale is a perpetual rentcharge the conveyance is chargeable with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument : Stamp Act, 1891, s. 56 (2) ; Highmore, 4th ed., 168. In the case in the text the rent being £10, the stamp will be £1, *i.e.*, on £200. The conveyance should be executed in duplicate.

(*d*) Grants at a fee farm rent, as they are usually called, are common in Manchester, Bristol and Bath, and a few other places. Strictly a " fee farm

(hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the lands hereinafter described and has agreed to sell the same to the Purchaser in consideration of the perpetual yearly rentcharge hereinafter limited and of the covenants by the Purchaser hereinafter contained : Seisin of Vendor and agreement for sale.

NOW THIS DEED WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the rent hereinafter reserved and the covenants by the Purchaser hereinafter contained, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser Conveyance.

ALL THAT piece of land situated, &c. (*see Forms, Sec. II, p.* 471, *et seq.*), Parcels.

TO HOLD unto the Purchaser in fee simple, reserving out of the premises to the Vendor in fee simple (*e*) a perpetual yearly Habendum, reserving a rentcharge.

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rent " is a rent incident to tenure created before the Statute Quia Emptores. In the L. P. Act, 1925, the expression " rentcharge " includes a fee farm rent : *ib.*, s. 205 (1) (xxiii).

Before 1926, a rentcharge created by tenants in common of the land, had to be created by conveying the land to the use that a rentcharge should issue thereout. A simple grant of a rentcharge of £*x* created a rentcharge of £*x* on each undivided share : Copinger on Rents, 78 ; Gilbert on Rents, 47 ; Co. Lit. 197a, 267b. After 1925 there will be no tenants in common of land but only of the proceeds of sale of land held on trust for sale. Creation of rentcharges by tenants in common before 1926.

After 1925 a tenant for life (including limited owners having the powers of tenants for life and statutory owners) has power, independently of any express provision in the settlement, to sell land in consideration of the reservation of a perpetual or terminable rentcharge : S. L. Act, 1925, s. 39 (2). Tenants for life, trustees for sale and personal representatives.

In the case of a terminable rent, unless the part attributable to interest varies according to the amount of the principal repaid (as in the case of a compensation rentcharge) the trustees must during the subsistence of the rent, accumulate at compound interest the income arising from the part of the rent attributable to principal, that part with the accumulations is made capital money : *ib.* This power is also exercisable by trustees for sale (L. P. Act, 1925, s. 28), and by personal representatives : Ad. of E. Act, 1925, s. 39. No such power is given to a mortgagee, for the object of the sale is to discharge the mortgage debt. In some cases it may be expedient to give an express power for this purpose to a mortgagee.

A legal rentcharge must either be perpetual or held for a term of years absolute (L. P. Act, 1925, s. 1 (2) (*b*)) ; as to the reservation of legal estates : *ib.*, s. 65 ; 4th Sch., Form No. 6. Reservations of legal rentcharges.

After 1925 an absolute right of re-entry annexed to a legal rentcharge may be reserved to resume possession of the land without regard to the rule against perpetuities (*ib.*, s. 4 (3)). The statutory rights of entry (*ib.*, s. 121) are limited to the recovery of the rent. Absolute rights of re-entry to resume possession.

(*e*) The statutory powers are not affected by the rule against perpetuities and take effect unless the instrument creating the rentcharge otherwise directs : Statutory and other remedies.

rentcharge of £10 to be for ever charged upon and issuing out of the property hereby conveyed and to be paid without any deduction, except for property or income tax, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment thereof to be made on the —— day of —— next.

Covenants by grantee.

2. THE Purchaser hereby covenants with the Vendor in manner following (that is to say):

To pay rentcharge.

(i) That the Purchaser will at all times hereafter pay the said yearly rentcharge at the times hereinbefore appointed for payment thereof.(*f*)

To complete a dwelling-house within twelve months.

(ii) That the Purchaser will within twelve months next after the date of these presents, at his expense, under the inspection and to the satisfaction of the architect of the Vendor, complete so as to be fit for habitation the messuage now in course of

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L. P. Act, 1925, s. 121. The remedies conferred by the Act do not prevent recourse to other remedies: *Searle* v. *Cooke* (1890), 43 Ch. D. 519, 533; 59 L. J. Ch. 259; hence, s. 5 of 4 Geo. 2, c. 28, which applies to chief rents, is not excluded. In the absence of any express provision, the court has power when a rentcharge is in arrear to order the arrears to be raised by sale or mortgage of the inheritance: *Re Tucker* [1893], 2 Ch. 323; 62 L. J. Ch. 442; *Hambro* v. *H.* [1894], 2 Ch. 564; 63 L. J. Ch. 627. But such an order will not be made if a term of years is vested in trustees upon the usual trusts for this purpose: *Hall* v. *Hurt* (1861), 2 J. & H. 76; *Blackburne* v. *Hope Edwardes* [1901], 1 Ch. 419; 70 L. J. Ch. 99.

Redemption of rentcharge.

All perpetual and terminable rentcharges are made redeemable by L. P. Act, 1925, s. 191, and for that purpose a rentcharge can be apportioned by the Minister: *ib.*

Covenant to pay a perpetual rentcharge.

(*f*) The remedy under the covenant is lost after 12 years under R. P. L. Act, 1874, s. 1: *Shaw* v. *Crompton* [1910], 2 K. B. 370; 80 L. J. K. B. 52. It is doubtful whether the burden of a covenant to pay a rentcharge runs with the land charged, but independently of covenant the owner of a rentcharge which is in arrear may bring an action of debt to recover the arrears against the *terre*-tenant, *i.e.*, the owner of the freehold for the time being: *Thomas* v. *Sylvester* (1873), L. R. 8 Q. B. 368; 42 L. J. Q. B. 237; *Christie* v. *Barker* (1884), 53 L. J. Q. B. 537; *Searle* v. *Cooke* (1890), 43 Ch. D. 519; 59 L. J. Ch. 259. It is no defence to an action for the whole amount of the rentcharge that the annual profits fall short of that amount: *Pertwee* v. *Townsend* [1896], 2 Q. B. 129; 65 L. J. Q. B. 659. But if the owner of the land, finding that the annual value is not equal to the rentcharge, relinquishes possession, he cannot be sued after such relinquishment: *Re Blackburn, &c., Building Society* (1889), 42 Ch. D. 343; 59 L. J. Ch. 183. A mere tenant for years cannot be sued: *Re Herbage Rents Charity* [1896], 2 Ch. 811; 65 L. J. Ch. 871; hence after 1925 the action will not lie against a mortgagee; but the estate of a road authority in a road is a sufficient interest to constitute them *terre*-tenants: *Foley's Charity* v. *Dudley Corpn.* [1910], 1 K. B. 317; 79 L. J. K. B. 410.

Liability of *terre*-tenant.

When apportionable.

If a person grants land in fee reserving a rentcharge, and the grantee is evicted from part of the land by title paramount, the rent is apportionable; this applied to a rent limited to the grantor by way of use: Co. Lit. 148b; *Hartley* v. *Maddocks* [1899], 2 Ch. 199; 68 L. J. Ch. 496.

erection upon the land, the said messuage to be, when completed, of the value of £—— at least.

(iii) That the Purchaser will at all times hereafter keep the said messuage and all boundary walls and drains belonging thereto, in good and tenantable repair and condition. To keep in repair.

(iv) That the Purchaser will permit the Vendor and all persons authorised by him, once in every year in the daytime on giving to the tenant or occupier for the time being of the premises at least one week's notice in writing of his intention so to do, to enter into and upon the premises in order to examine the condition thereof. To permit grantor to enter and view.

(v) That the Purchaser will at all times insure and keep insured against loss or damage by fire the said messuage in the —— office, or some other public insurance office, or with insurers at Lloyd's, in the sum of £—— at least, and will on demand produce to the Vendor the policy or policies of insurance, and the receipt for the premium payable in respect thereof for the current year, and will whenever any loss or damage by fire shall happen to the said messuage or any part thereof forthwith expend the money received under such insurance as aforesaid, and also such other money as may be necessary for the purpose, in rebuilding or reinstating the same.(*g*) To insure against fire and pay premiums of insurance, and produce policies and receipts.

3. For the benefit of the —— Estate of the Vendor the Purchaser (with intent to bind all persons in whom the land hereby conveyed shall for the time being be vested, but so as not to be personally liable for the breach of any restrictive covenant after he has parted with the said land), hereby further covenants with the Vendor in manner following (that is to say) :— Restrictive covenants by Purchaser.

(i) That the Purchaser will not alter or permit to be altered the external plan or elevation of the said messuage without the previous consent in writing of the Vendor, nor will without such

(*g*) The covenants to build, repair, and insure, &c., do not run as to the burden of them with the land nor as to the benefit of them with the rent, and cannot be made to do so either at law or in equity. Consequently, an assign of the rent cannot sue, nor can an assign of the land be sued on them : *Haywood* v. *Brunswick Building Society* (1881), 8 Q. B. D. 403 ; 51 L. J. Q. B. 73 ; *Re Nisbet and Potts* [1905], 1 Ch., at p. 397 ; 74 L. J. Ch. 310 ; aff. [1906], 1 Ch. 386 ; 75 L. J. Ch. 238. The L. P. Act, 1925, ss. 79-80, do not make the burden of affirmative covenants run with the land. This does not, however, affect the power of re-entry (see clause 4), which is made exercisable, not on the breach of a covenant which has ceased to be enforceable, but on the happening of specific events. Covenants to build, repair, &c., in fee farm grant do not run with land. Power of re-entry.

consent as aforesaid erect upon the said land any other messuage or building than the said messuage now in course of erection as aforesaid except a motor-house, stable, or coach-house, or greenhouse, or conservatories in connexion therewith.

(ii) That the Purchaser will not at any time without such consent as aforesaid carry on or permit to be carried on upon the premises any trade or business whatsoever, or use or permit the same to be used for any other purpose than as a private dwelling-house or as flats.(*h*) (*Add or substitute any other restrictive covenants which may be agreed on, see Second Schedule to Prec. III of Group C, p. 741, et seq.*)

Power for grantor in case of breach of covenant as to building, repairs, &c., to enter and do necessary work.

4. PROVIDED (*i*) that—

(A) if the said messuage shall not be completed within twelve months from the date hereof pursuant to the foregoing covenant in that behalf or

(B) if the said messuage shall be destroyed or damaged by fire, or shall fall into disrepair, and the Purchaser shall fail to rebuild or repair the same for the space of three months after a notice in writing requiring him so to do shall have been given to him, or left at or upon the premises hereby conveyed by or on behalf of the Vendor

then and in such case and so often as the same shall happen and notwithstanding the waiver of any previous default, the Vendor and the persons deriving title under him may at any time(*j*) enter into and upon the premises and execute and do such works,

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Restrictive covenants, how and by and against whom they can be enforced.

(*h*) The restrictive covenants in the above Prec. are intended to prevent the value of the land retained by the grantor from being depreciated by the acts prohibited. They can be enforced by injunction against the grantee, and all persons deriving title under him provided that a land charge is registered under L. C. Act, 1925, s. 10, Class D (ii).

Power of re-entry.

(*i*) This power takes effect under L. P. Act, 1925, s. 4 (2), (3), and is exercisable by the owner of the rent for the time being; that section enables a right of entry, whether immediate or future and whether vested or contingent, to be disposed of by deed or will. It seems that the power cannot be exercised in respect of a breach of condition occurring before conveyance (*Hunt* v. *Bishop* (1853), 8 Exch. 675; 22 L. J. Ex. 337 (on appeal as *Hunt* v. *Remnant* (1854), 9 Exch. 635; 23 L. J. Ex. 135); *Cohen* v. *Tannar* [1900], 2 Q. B. 609; 69 L. J. Q. B. 904); for L. P. Act, 1925, s. 140 (3), only applies to the acquisition of reversions expectant on a term; but see Challis, R. P., 2nd ed., p. 67 (n). In such case it is at the election of the person then entitled to enter whether he will take advantage of the breach of condition: see *Jenkins* v. *Jones* (1882), 9 Q. B. D., at p. 131; 51 L. J. Q. B. 438. If on a sale of the rent the purchaser finds that a breach has been committed, he should call upon the vendor to exercise the power before the rent is assigned.

Perpetuity rule.

(*j*) It is unnecessary to limit the time under which the power of entry is to be exercisable; L. P. Act, 1925, ss. 1 (2) (*e*), 4 (3). Had the land been

acts, and things thereon as shall be necessary or proper for the completion of the said messuage or for rebuilding or repairing the same, as the case may require, and may remain in the possession or receipt of the rents and profits of the premises until thereby or otherwise all sums of money expended by the Vendor or the persons deriving title under him in or about such works, acts, and things as aforesaid, together with all costs and expenses occasioned by the exercise of this power, shall be fully paid and satisfied.

5. (*Acknowledgment by Vendor as to documents, Form No.* 4, *Sec. III*, p. 480.)(*k*)

6. IN these presents the expressions "Vendor" and "Purchaser" include the persons respectively deriving title under them. Interpretation.

7. (*Add declaration that the conveyance does not form part of another transaction, Form No.* 8, *Sec. III, p.* 483.)(*l*)

IN WITNESS, &c.

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conveyed by a tenant for life or by trustees for sale or by personal representatives it would have been necessary to add a power of re-entry for non-payment of rent for 30 days in accordance with S. L. Act, 1925 s. 39 (4) (i). Sales by fiduciary owners.

The provisions of L. P. Act, 1925, s. 196, respecting notices will apply without an express reference: *ib.*, sub-s. 5. Notices.

The provisions of L. P. Act, 1925, s. 146, apply to grants at fee farm rents in like manner as they apply to leases, hence the notice required by that section must be served before the power of re-entry is exercised, though the power in the text is not to take possession so as to exclude the purchaser for all time. Relief against forfeiture.

(*k*) The contract should expressly provide for the retainer of any documents to be kept by the vendor. Apart from such a provision it would seem that the purchaser is entitled to them: *Whitfield* v. *Fausset* (1749), 1 Ves. Sen., at p. 394, unless he retains part of the land or the instrument otherwise comes within L. P. Act, 1925, s. 45 (9). Documents.

As to registered land, see note at the head of this Group. Registered land.

(*l*) See first note to this Prec. If the consideration for the purpose of stamp duty is more than £500, this clause will be omitted.

If several houses are to be built the purchaser of the land should stipulate for the insertion of the following provision, though, for the purposes of redemption, an apportionment can be made by the Minister under L. P. Act, 1925, s. 191 (7):— Stamp.

(i) PROVIDED ALWAYS that on the completion to the reasonable satisfaction of the Vendor's surveyor of each of the houses hereinbefore covenanted to be erected the yearly rentcharge of £—— hereinbefore reserved shall thereupon by virtue of this provision be apportioned between the several houses in like manner as if a yearly rentcharge of £—— had been hereby reserved in respect of each house and the land held therewith and the covenants by the Purchaser herein contained and the Apportionment of perpetual rentcharge.

No. II.

BUILDING GRANT *at a perpetual* RENTCHARGE *by a* TENANT FOR LIFE *under* SECTION thirty-nine *of the* S. L. ACT, 1925.(*m*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE AND SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Principal vesting deed, creating a settlement.

(1) By a Principal Vesting Deed (hereinafter called the Principal Deed), dated, &c., and made between the Vendor of the 1st part, Jane R., spinster, of the 2nd part, and R. T. and C. T., of the 3rd part, the freehold lands hereinafter described (with other property) were stated to be vested in the Vendor in fee simple upon the trusts of a trust instrument of even date herewith: And [as appears] by [endorsements on] the principal Deed the said R. T. and C. T. [*or* the said C. T. and N. T.] hereinafter called the trustees were stated to be [are now] the trustees of the settlement for the purposes of the Settled Land Act, 1925: And it was thereby declared that the Vendor had power during his life to appoint new trustees of the settlement:

Principal vesting deed for giving effect to a subsisting settlement.

[*or* (1) By a Principal Vesting Deed, dated, &c., and made between C. T. and N. T. (hereinafter called the Trustees) of the one part, and the Vendor of the other part, the Trustees declared first, that the lands hereinafter described (with other property) were vested in the Vendor in fee simple upon the trusts of a settlement dated, &c. [*or* of the Will of —— proved ——]; secondly, that the Trustees were the trustees of the settlement for the purposes of the Settled Land Act, 1925; and thirdly, that

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powers and provisions hereof (whether express or implied) shall be apportioned accordingly.

(ii) THE certificate of the Vendor's surveyor (which shall be paid for by the Purchaser) that his requirements have been complied with shall be conclusive evidence of the aforesaid apportionment.

Statutory requirements.

(*m*) To comply with the powers given by S. L. Act, 1925, s. 39, whether exercised by a tenant for life, trustees for sale or personal representatives, there must be (*ib.*, sub-s. 4):—

(1) A covenant by the purchaser to pay the rent.

(2) A power to re-enter if the rent is in arrear for thirty days. The remedies implied under L. P. Act, 1925, s. 121, give power to enter and distrain after twenty-one days, but do not authorise the taking of possession of the land or the rents and profits till after forty days' default.

the Vendor had power during his life to appoint new trustees of the settlement.]

(2) The Vendor has agreed to grant the land hereinafter described to the Purchaser for the consideration (*n*) and in the manner hereinafter appearing : Agreement for grant.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the rent hereinafter reserved and the covenants by the Purchaser hereinafter contained, and in exercise of the power for this purpose conferred on the Vendor by the Settled Land Act, 1925, and of every other power (if any) him enabling, the Vendor, As Trustee, hereby conveys unto the Purchaser, Conveyance. Parcels.

All, &c. (*Forms in Sec. II, p.* 471, *et seq.*),

To hold unto the Purchaser in fee simple Reserving (out of the land hereby granted) to the Vendor in fee simple a perpetual yearly rentcharge of £——, to be for ever charged upon and issuing out of the premises hereby conveyed clear of all deductions (except for property or income tax) and payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment to be made on the —— day of —— next. Reservation of perpetual rentcharge.

2. The said rentcharge is vested in the Vendor and is subject to the above-mentioned settlement (being the settlement which immediately before the date hereof was subsisting with respect to the land hereby conveyed) and accordingly shall be held by the Vendor upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the freehold land therein comprised. Declaration that rentcharge is subject to the settlement.

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(3) The conveyance must be executed in duplicate.

Under s. 10 the rentcharge, when settled land is sold, vests in the tenant for life and the grant becomes a subsidiary vesting deed and must contain sub-s. 3):—

(a) A statement that the rentcharge is vested in the grantor and is subject to the settlement subsisting with respect to the land out of which the rent is reserved ;

(b) Particulars of the last or any principal vesting instrument affecting the land.

Under s. 39 (3) a nominal or other rent less than the rent ultimately payable may be reserved for the first five years from the date of the grant. Power to reserve nominal rent.

(*n*) Where no capital money arises under a transaction a purchaser of a legal estate is not concerned to see that there are subsisting S. L. Act trustees : S. L. Act, 1925, s. 110 (4). But once trustees have been appointed there is not likely to be a total vacancy : T. Act, 1925, s. 18 ; see also S. L. Act, 1925, s. 34 (2). Transaction not involving capital money.

Particulars of last or only principal vesting instrument.

3. PARTICULARS of the last or only vesting instrument affecting the land hereby conveyed are contained in the foregoing recitals and accordingly as thereby appears :—

(1) The Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

(2) The power to appoint new trustees of the settlement is vested in the Vendor during his life.

Power of entry exercisable after thirty days' default.

4. (1) FOR the purposes of these presents sub-section 3 of section one hundred and twenty-one of the Law of Property Act, 1925, shall have effect as if the words "thirty days" had been inserted therein in place of "forty days."

(2) PROVIDED that so far only as may be required by section thirty-nine of the Settled Land Act, 1925, the Vendor may at any time after the rentcharge hereby reserved or any part thereof is unpaid for thirty days after the time appointed for payment thereof enter upon the premises hereby conveyed and repossess the same in like manner as if these presents had become void ; [but subject to serving on the Purchaser a notice similar to that which would have been required if the non-payment of rent had been a breach of covenant within section one hundred and forty-six of the Law of Property Act, 1925].

Covenant to pay, &c., restrictive covenants.

Power of re-entry and acknowledgment.

5. (*As in clause* 2 *of last Prec.*)

6. (*As in clause* 3 *of last Prec.*)

7 and 8. (*As in clauses* 4 *and* 5 *of last Prec.*)

Interpretation.

9. IN these presents the expression "the Vendor" includes his successors in title and the expression "the Purchaser" includes the persons deriving title under him.

10. (*If the consideration is under* £500, *see first and last notes to last Prec., insert Form No.* 8, *of Sec. III, p.* 483.)

IN WITNESS, &c.(*o*)

No. III.

BUILDING GRANT *at a perpetual* RENTCHARGE *by* TRUSTEES *for* SALE.(*p*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, BETWEEN C. T., of, &c., and N. T., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of the 1st part, A. B., of, &c. (*person at whose request the trust*

(*o*) This conveyance must be executed in duplicate.

Registered land.

As to registered land see the note at the head of this Group.

(*p*) The power to sell in consideration of a rentcharge is given by L. P. Act, 1925, s. 28, by reference to S. L. Act, 1925, s. 39.

for sale is exercisable) of the 2nd part, and C. B., of, &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Assent on trust for sale.

(1) By an Assent in writing, dated, &c., the said C. T. and R. T. as the personal representatives of X. Y. deceased (who at his death was seised of the property hereinafter described with other property for an estate in fee simple free from incumbrances), assented to the vesting of the said property in themselves in fee simple upon trust to sell the same but during the lifetime of the said A. B., with his consent in writing and to stand possessed of the net proceeds of sale, and the net rents and profits until sale upon the trusts respectively declared concerning the same by the Will of the said X. Y., proved on the —— day of —— 19—: And thereby declared that the power to appoint new trustees of the said Assent was vested in the said A. B. during his life:

Appointment of a new trustee of the assent.

(2) By a Deed of Appointment, dated, &c., and made between the said A. B., of the 1st part, the said R. T. of the 2nd part, and the Vendors of the 3rd part, the said N. T., was appointed to be a new trustee of the recited Assent in place of the said R. T. (who retired from the trust) and to act jointly with the said C. T., and the said property thereupon became vested in the Vendors on the trusts of the said Assent:

Agreement for grant.

(3) The Vendors have, with the consent of the said A. B., agreed with the Purchaser to make such grant as hereinafter appearing:

NOW THIS DEED WITNESSETH as follows:—

Conveyance reserving rentcharge.

1. IN pursuance of the said agreement and in consideration of the rent hereinafter reserved and of the covenants by the Purchaser hereinafter contained the Vendors with the consent of the said A. B. (testified by his execution of these presents), and, As Trustees, hereby convey unto the Purchaser,

ALL THAT, &c. (*Forms in Sec. II, p.* 471, *et seq. Excepting the minerals and reserving right to work*),

TO HOLD (except and reserved as aforesaid) unto the Purchaser in fee simple RESERVING out of the premises unto the Vendors in fee simple a perpetual yearly rentcharge of £—— to be for ever charged on and issuing out of the premises hereby conveyed clear of all deductions (except landlord's property tax) and payable by equal half-yearly payments on the —— day of ——and the —— day of —— in every year the first payment to be made on the —— day of —— next.

Trusts of rentcharge.

2. (1) THE said rentcharge shall be held by the Vendors upon the trusts declared by the recited Assent concerning the land comprised therein and until sale the said rentcharge shall be held on the trusts affecting the net rents and profits mentioned in the said Assent.

(2) THE power to appoint new trustees mentioned in the said Assent shall apply and extend to these presents as respects the rentcharge hereby reserved.

3. (*As in Clause* 4 *of last Prec., saying* "Vendors" instead of Vendor.")

4, 5, 6, 7 and 8. (*As in Clauses* 2, 3, 4, 5 *and* 6 *of Prec. No. I of this Group.*)

[9. *If the consideration reckoned for purposes of Stamp Duty, see Notes to Prec. No. I of this Group, does not exceed* £500, *add Form No.* 8, *Sec. III, p.* 483, *supra.*]

IN WITNESS, &c.(*q*)

No. IV.

BUILDING GRANT *at a perpetual* RENTCHARGE *by* MORTGAGEE *and* MORTGAGOR.(*r*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Mortgagee), of the 1st part, C. D., of, &c. (hereinafter called the Vendor), of the second part, and E. F., of &c. (hereinafter called the Purchaser), of the 3rd part: WHEREAS:—

Mortgage and conversion into long term.

(1) and (2) By a Mortgage (*Recite Mortgage, &c., by Vendor to Mortgagee for* £——, *as in Form No.* 2, *Sec. I, p.* 452):

Personal representatives.

(*q*) This conveyance must be executed in duplicate. A similar grant can be made by personal representatives: Ad. of E. Act, 1925, s. 39.

Registered land.

As to registered land see the note at the head of this Group.

If the grantor is the registered proprietor there need be no recitals, but the facts recited in this Precedent will have to be proved to the Registrar on registration of the grant. The heading will be the same as in an ordinary transfer; the title to the rent must be registered.

(*r*) A mortgagee would not, of course, join in a transaction of this kind unless the rent is, with any other income charged, in excess of the interest payable in respect of the balance of the mortgage debt.

Reservations of legal rentcharges pass the "possession," and "receipt."

The reservation of a legal rentcharge (*i.e.*, perpetual or for a term of years absolute) operates to create the rentcharge and vest it in "possession" in the person, whether or not being the grantor, for whose benefit the reservation is made (L. P. Act, 1925, s. 65); "possession" includes receipt of rent and profits (*ib.*, s. 205 (1) (xix)); and "rent" includes a "rentcharge": (*ib.*, (xxiii)); hence the person to whom it is reserved is in "receipt" of the

(3) The Vendor has agreed to make such grant to the Purchaser as hereinafter appearing in consideration of the sum of £500 and of the rent and covenants hereinafter reserved and contained : Agreement for grant.

(4) The said principal sum of £——, with the current interest thereon, is still owing to the Mortgagee on the security of the recited Mortgage, and he has agreed to join in these presents in manner hereinafter appearing on receiving the sum of £500 in part discharge of his said mortgage debt and upon having the sum of £200 (the balance thereof) secured by the rentcharge hereinafter limited : State of mortgage debt and agreement by Mortgagee to surrender.

NOW THIS DEED WITNESSETH as follows :—

1. (1) In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser by the direction of the Vendor to the Mortgagee (the receipt and payment of which sum the Mortgagee and the Vendor hereby respectively acknowledge) and of the rentcharge hereby reserved and the covenants by the Purchaser hereinafter contained, the Mortgagee, at the request of the Vendor and, As Mortgagee, and according to his mortgage term, hereby surrenders and releases and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser, Conveyance to Purchaser limiting rent to Mortgagee and Mortgagor.

All that, &c.

To hold unto the Purchaser in fee simple Reserving the rentcharge hereinafter mentioned First to the Mortgagee for a term of 3,000 years from the date hereof without impeachment of waste subject to cesser on payment by the Vendor on the —— day of —— next (*the next half-yearly day mentioned in the mortgage*) of the said principal sum of £—— (balance of the said mortgage debt) with interest thereon payable on the days and at the rate mentioned in the recited Mortgage And Secondly (but subject to and in reversion immediately expectant on the said term) to the Vendor in fee simple. Habendum creating a mortgage term in the rentcharge.

(2) The rentcharge hereby reserved shall be—

One perpetual yearly rentcharge of £—— to be for ever charged upon and issuing out of the premises hereby conveyed clear of all deductions (except landlord's property tax) and payable by equal half-yearly payments on the —— day of

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rentcharge before actual payment. In place of a reservation of a term to the mortgagee the vendor could by a separate deed charge the rent by way of legal mortgage in favour of the mortgagee. This is the better procedure.

—— and the —— day of —— in every year the first payment or proportionate payment to be made on the —— day of —— next being the next day for payment of interest on the said Mortgage debt.

Covenants by grantee.

2. THE Purchaser hereby covenants with the Mortgagee and also separately with the Vendor, in manner following (that is to say) (*Add sub-clauses (i) to (v) of Clause 2 as in Prec. No. I of this Group.*)

Restrictive covenants.

3. (*As in Clause 3 of Prec. No. I, but say* "further covenants with the Mortgagee and also separately with the Vendor.")

Power to re-enter.

4. (*As in Clause 4 of Prec. No. I, but give the powers to* "the Mortgagee and the Vendor or the persons respectively deriving title under them.")

Acknowledgments.

5. (*If any deeds are retained by the Mortgagee he will give the acknowledgment.*)

Declaration that rent shall be subject to redemption, and shall be paid to Mortgagor until notice.

6. (1) THE rentcharge hereinbefore reserved and the benefit of the covenants and provisions hereinbefore contained shall be subject to the same right of redemption as was subsisting under the recited Mortgage in the land hereby granted immediately before the execution of these presents, and shall be redeemable on payment of the sum of £—— (the balance of the said mortgage debt of £——) and the interest thereon.

(2) THE Purchaser shall pay the said rentcharge to the Vendor until the Mortgagee shall by a notice in writing require the payment thereof to himself, and until such notice the Vendor shall have the like remedies for recovering the said rentcharge and for enforcing performance of the Purchaser's covenants as if the Vendor were the Mortgagee.

(3) SUBJECT as aforesaid, all the statutory and other powers and remedies for compelling payment of the said rentcharge shall be exercisable by the Mortgagee and for these purposes the Vendor in consideration of the premises irrevocably appoints the Mortgagee and the persons deriving title under him as his attorney or attorneys.

Definitions.

7. IN these presents the expressions "the Mortgagee," "the Vendor," and "the Purchaser" include the persons respectively deriving title under them.

IN WITNESS, &c.(*s*)

(*s*) This conveyance should be executed in duplicate.

Registered land.

As to registered land, see the note at the head of this Group. If the mortgagor and mortgagee are registered as proprietors of the land and of the mortgage or charge, there need be no recitals.

No. V.

GRANT *and* SALE *of a* PERPETUAL RENT *to be charged on the Vendor's Land.* COVENANTS *by* VENDOR *to pay* RENT *and as to* BUILDINGS. POWER *for* PURCHASER *to* ENTER *to remedy breaches.*(*t*) (*Legal Estate.*)

THIS GRANT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) The Vendor is seised of the land described in the Schedule hereto for an estate in fee simple in possession free from incumbrances: Seisin of Vendor.

(2) The Vendor has agreed to create and sell to the Purchaser for the sum of £—— a perpetual yearly rentcharge of £——, to be charged on the land described in the said Schedule, and to be further secured in the manner hereinafter appearing: Agreement for sale of rentcharge.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby grants unto the Purchaser Grant of rentcharge.

ONE perpetual yearly rentcharge of £—— to be for ever charged upon and issuing out of the land described in the Schedule hereto (except the mines and minerals thereunder) clear of all deductions (except landlord's property tax) to commence from the date hereof, and to accrue from day to day but to be payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year the first payment to be made on the —— day of —— next TOGETHER with all statutory and other powers and remedies for recovering and compelling payment thereof. Parcels.

TO HOLD unto the Purchaser in fee simple PROVIDED that nothing herein contained shall affect the right of the Vendor or the persons deriving title under him to work and carry away (but by underground workings only) the mines and minerals within and under the land charged with the said rentcharge whether or not the surface or any buildings erected or to be erected thereon shall be thereby damaged and without paying any compensation for such damage, if any. Habendum without prejudice of right to work minerals.

(*t*) It is undesirable, as is sometimes done, to include grants of several rentcharges issuing out of several plots in one deed. For the sake of the title both to the land and to the rent there should be a separate conveyance of each plot. Separate rentcharges.

2 to 6. (*Covenants by Vendor to pay rent, complete building, repair and insure, power for Purchaser to enter to remedy breaches, acknowledgment and undertaking by Vendor as to documents and interpretation clause, as in Prec. I of this Group, substituting throughout* "the Vendor" *for* "*the Purchaser*" *and* "the Purchaser" *for* "*the Vendor*," *and omitting the restrictive covenants. Add Form No.* 8, *p.* 483, *if required.*)

IN WITNESS, &c.(*u*)

THE SCHEDULE.

Particulars of the land hereby charged.

No. VI.

CONVEYANCE *of* FREEHOLD PROPERTY *subject to an existing* PERPETUAL RENTCHARGE. (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Building grant. (1) By Grant (*v*) dated, &c., and made between G. H. of the one part and the Vendor of the other part, the land hereinafter described was conveyed To the Use that the said G. H. should have in fee simple a perpetual rentcharge of £—— issuing out of the said land, and subject thereto To the Use of the Vendor in

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(*u*) This deed should be executed in duplicate; it is desirable to indorse a memorandum of its execution on one of the title deeds retained by the vendor, see L. P. Act, 1925, s. 200.

Registered land. As to registered land, see the note at the head of this Group.

Grant passes the "possession" and "receipt." The grant of the rentcharge passes the possession in like manner as if before 1926 the land had been limited to a grantee in fee simple to the use that the purchaser should have the rentcharge and subject thereto to the use of the vendor (L. P. Act, 1925, s. 51); "possession" includes receipt of rents and profits (*ib.*, s. 205 (1) (xix)), hence the grantee is in receipt of the rentcharge before actual payment; "rent" includes "rentcharge": *ib.*, (xxiii).

Stamp. (*v*) See Prec. I of this Group, p. 752, and the notes thereto. The stamp will be *ad valorem* on the purchase-money; no stamp is charged in respect of the rentcharge, *cf. Swayne* v. *I. R. Commrs.* [1900], 1 Q. B. 172; 69 L. J. Q. B. 63; Alpe, 18th ed., 125; Highmore, 4th ed., 171.

Registered land. As to registered land, see the note at the head of this Group. If (as would usually be the case) the rentcharge is noted or protected on the register the transaction can be effected by a transfer (in Form No. 19), there need be no recital of or reference to the rentcharge in it. See also rr. 76 and 77 as to the implied covenants for title and r. 109 as to implied covenants for indemnity.

fee simple ; [*or if made after* 1925 " was conveyed to the Vendor in fee simple reserving thereout to the said G. H. in fee simple a perpetual yearly rentcharge of £—— issuing out of the said land] And the said Grant contained a covenant by the Vendor for the payment of the said rent and certain other covenants by him as to buildings and otherwise :

Erection of dwelling-house.

(2) Since the execution of the said Grant the Vendor, pursuant to a covenant therein contained, has erected a messuage upon the said land :

Agreement for sale.

(3) The Vendor has agreed to sell to the Purchaser the messuage and land hereinafter described and the fee simple thereof in possession subject to the said rentcharge and to the said covenants and conditions, but otherwise free from incumbrances, at the price of £—— :

NOW THIS DEED WITNESSETH as follows :—

Conveyance.

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

ALL THAT, &c. (*Forms in Sec. II, p.* 471, *et seq.*) TOGETHER with the messuage known as ——, which has been erected thereon as aforesaid,

Habendum.

TO HOLD unto the Purchaser in fee simple, subject to the said rentcharge of £—— and all powers and remedies for recovering the same, and subject also to the covenants and conditions contained in the recited Grant.

Covenant by Purchaser to indemnify.

2. COVENANT (A) referred to in section seventy-seven of the Law of Property Act, 1925, is implied in these presents.(*w*)

[3 and 4. *Add acknowledgment and undertaking, Form No.* 4, *p.* 480, *if required ; also Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

Covenants for indemnity.

(*w*) The benefit of the implied covenants for indemnity is annexed to the estate or interest of the vendor, the implied covenantee (L. P. Act, 1925, s. 77 (5)), but in the case in the text no estate is reserved to the vendor, hence the covenant operates as a simple indemnity to the vendor. In the case in the text none of the remedies given by s. 190 are applicable for the whole of the land affected by the rentcharge is conveyed.

See also as to covenants for indemnity *Re Poole and Clarke* [1904], 2 Ch. 173 ; 73 L. J. Ch. 612 ; see also *Harris* v. *Boots, Cash Chemists, Ltd.* [1904], 2 Ch. 376 ; 73 L. J. Ch. 708 ; *Reckitt* v. *Cody* [1920], 2 Ch. 452 ; 90 L. J. Ch. 27.

Right to redeem rentcharge.

Under L. P. Act, 1925, s. 191, perpetual or terminable rentcharges can be redeemed, and for that purpose any requisite apportionment will be made by the Minister.

No. VII.

CONVEYANCE *of* ONE *of several* HOUSES *subject to a* PROPORTIONATE PART *of a* PERPETUAL RENTCHARGE *reserved in respect of* ALL *the* HOUSES *by the* ORIGINAL GRANT.(*x*) (*Legal Estate.*)

Parties. THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Building grant. (1) (*Recite as in the last Prec. building grant to Vendor, subject to perpetual rentcharge of* £12):

Erection of four houses. (2) Pursuant to a covenant for that purpose contained in the said Grant the Vendor has erected and completed four dwelling-houses on the piece of land thereby conveyed, or on parts thereof:

Agreement for sale. (3) The Vendor has agreed to sell to the Purchaser the dwelling-house and land hereinafter described (being one of the said four dwelling-houses) and the fee simple thereof in possession, subject to the payment of the equitably apportioned yearly rentcharge of £3, part of the said yearly rentcharge of £12 reserved by the said Grant at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance. 1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels. ALL THAT messuage, &c. (*see Form No.* 6, *Sec. II*, *p.* 471),

TO HOLD unto the Purchaser in fee simple, subject with the other property affected thereby to the said yearly rentcharge of £12 but partially exonerated therefrom in manner hereinafter provided.

Equitable apportionment of rentcharge. 2. As between the premises hereby conveyed and the other property comprised in the recited Grant the premises hereby conveyed shall henceforth stand charged with the payment of a yearly rentcharge of £3 (part of the said yearly rentcharge of £12

Apportionment. (*x*) As the owner of the rentcharge is not a party to the conveyance, the apportionment can only take effect as between the vendor and purchaser, and does not affect the right of the owner of the rentcharge to exercise his powers in respect to any part of the property comprised in the original conveyance which limited the rentcharge.

Stamp. As to the stamp, see first note to last Precedent; the Inland Revenue do not claim any additional stamp duty by reason of the equitable charge.

reserved by the recited Grant) in exoneration of the other property, and the said other property shall stand charged with the payment of the residue of the said rentcharge of £12 in exoneration of the premises hereby conveyed.

Cross-covenants for indemnity (*y*) and cross-powers of distress.

3. (1) THE cross covenants (B) referred to in section seventy-seven of the Law of Property Act, 1925, are implied in these presents.

(2) THE cross powers of entry and distress mentioned in sub-section 2 of section one hundred and ninety of the said Act are implied in these presents.

Cross charges.

4. (1) THE Purchaser hereby charges the premises hereby conveyed with the payment of all such money (if any) as shall become payable under the covenant implied by him as aforesaid.

(2) THE Vendor hereby charges the property retained by him and comprised in the recited Grant with the payment of all such money (if any) as shall become payable under the covenant implied by him as aforesaid.

Acknowledgment, &c., as to building grant.

5. THE Vendor hereby acknowledges the right of the Purchaser to production of the recited Grant (*and any other documents retained*) and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.(*z*)

IN WITNESS, &c.

No. VIII.

CONVEYANCE *of* ANOTHER *of the* HOUSES *referred to in the last Precedent subject to a* PROPORTIONATE PART *of the* RENTCHARGE. (*Legal Estate.*(*a*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c.

Enforcement of covenants.

(*y*) The remedy on the personal covenant could not be enforced after 12 years from the last payment without acknowledgment: *Shaw* v. *Crompton* [1910], 2 K. B. 370; 80 L. J. K. B. 52; but the benefit of covenants implied under L. P. Act, 1925, s. 77, are annexed to the estate and interest of the implied covenantee and can be enforced by the person in whom that estate is in whole or part vested: *ib.*, sub-s. 5.

Cross charges.

The covenants can be extended and cross charges can be given (as in clause 4 of the text): *ib.*, sub-s. 7.

(*z*) This conveyance should be executed in duplicate. Add Form No. 8, Sec. III, p. 483, if the purchase-money does not exceed £500.

Registered land.

As to registered land, see note at the head of this Group. In this case the above Precedent with its recitals will apply better than the Instrument of Transfer in Form 19, but the ordinary heading applicable to transfers should be used.

(*a*) See notes to last Precedent.

(hereinafter called the Vendor), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

(1) and (2) (*Recite building grant, defining it as* "the Grant" *and erection of houses, as in last Precedent*):

Conveyance of one house subject to proportion of rentcharge.

(3) By a Deed (hereinafter called Conveyance No. 1), dated, &c., the Vendor conveyed one of the said dwelling-houses unto the said C. D. in fee simple And it was thereby provided that as between the premises thereby conveyed and the other property comprised in the Original Grant the premises thereby conveyed should be subject to the payment of a yearly rentcharge of £3 (part of the said yearly rentcharge of £12), in exoneration of the other property, and that the said other property should be subject to the payment of a yearly rentcharge of £9, residue of the said yearly rentcharge of £12, in exoneration of the premises thereby conveyed And in Conveyance No. 1 the usual cross covenants for indemnity and cross powers of distress were implied under sections seventy-seven and one hundred and ninety of the Law of Property Act, 1925. And the Vendor and the said C. D. charged the said conveyed and retained properties with all money (if any) which might from time to time become payable under their respective covenants:

Agreement to sell another house.

(4) The Vendor has agreed to sell to the Purchaser the dwelling-house and land hereinafter described (being another of the said four dwelling-houses) and the fee simple thereof in possession, subject to an apportioned yearly rentcharge of £3 (part of the said yearly rentcharge of £9, apportioned as aforesaid in respect of such of the property comprised in the Original Grant as were not conveyed by Conveyance No. 1), at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

ALL THAT, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum.

TO HOLD unto the Purchaser in fee simple, subject with the other property affected thereby to the said aggregate yearly rentcharge of £12, but partially exonerated therefrom in manner hereinafter provided.

Benefit of covenants in first conveyance to enure.

2. THE benefit of the covenants and charge by the said C. D. contained in Conveyance No. 1 shall henceforth belong to the Purchaser and the persons deriving title under him, in respect

of the premises hereby conveyed as well as to the Vendor and the persons deriving title under him, in respect of the property retained by the Vendor.

Further apportionment of rentcharge.

3. THE yearly rentcharge of £9 by Conveyance No. 1 agreed to be thenceforth charged on the property not thereby conveyed shall be henceforth apportioned so that the premises hereby conveyed shall stand charged with the payment of the yearly rentcharge of £3, part thereof, in exoneration of the property retained by the Vendor, and that the property retained by the Vendor shall stand charged with the payment of the yearly rentcharge of £6, residue thereof, in exoneration of the premises hereby conveyed.

Cross covenants and powers of distress.

4. THE cross covenants (B) referred to in section seventy-seven of the Law of Property Act, 1925, and the cross powers of entry and distress mentioned in sub-section (2) of section one hundred and ninety are implied in these presents and shall apply to the yearly rentcharge of £3 payable by the Purchaser, and the yearly rentcharge of £6 payable by the Vendor as aforesaid and to the covenants and conditions in the Original Grant respectively affecting the premises hereby conveyed and the property retained by the Vendor.

Cross charges.

5. (1) THE Purchaser hereby charges the premises hereby conveyed with the payment of the said rentcharge of £3, and all such other money (if any) as shall become payable under the covenant implied by him as aforesaid.

(2) THE Vendor hereby charges the property retained by him and comprised in the Original Grant with the payment of the said rentcharge of £6, and all such other money (if any) as shall become payable under the covenant implied by him as aforesaid.

Acknowledgment, &c., as to counterpart of Conveyance.

6. THE Vendor hereby acknowledges the right of the Purchaser to production of the Original Grant and Conveyance No. 1 (*and any other documents retained*), and to delivery of copies thereof And hereby undertakes for the safe custody thereof.

IN WITNESS, &c.(*b*)

(*b*) This conveyance should be executed in duplicate. Add Form No. 8, Sec. III, p. 483, if the purchase-money does not exceed £500.

Conveyance of part of land wholly subject to or wholly exonerated from the rentcharge.

If the deed takes the form of a conveyance of part of the land charged with the entire rent (leaving the other land free) or of a conveyance free from the entire rent (charging that rent on the other land) then sub-s. 2 of s. 77 of the L. P. Act, 1925, makes the requisite variations in the implied covenants.

Registered land.

As to registered land, see note at the head of this Group. In this case the above Precedent with its recitals will apply better than the Instrument of Transfer in Form 19, but the usual heading applicable to transfers should be used.

No. IX.

DEED *containing* MUTUAL COVENANTS *by several* PURCHASERS *for* PAYMENT *of* PROPORTIONATE PARTS *of* PERPETUAL RENTCHARGE *and for* PERFORMANCE *of* COVENANTS *in* BUILDING GRANT.

Parties.

THIS DEED OF COVENANT is made, &c., BETWEEN A. B., of, &c. (*one of the four Purchasers*), of the 1st part, C. D., of, &c. (*another of the four Purchasers*), of the 2nd part, E. F., of, &c. (*another of the four Purchasers*), of the 3rd part, and G. H., of, &c. (*the other of the four Purchasers*), of the 4th part: WHEREAS:—

(1) (*Recite the "Building Grant" whereby a piece of land, &c., was granted by L. M. to N. O. in fee simple, reserving a yearly rentcharge of £12 to L. M. in fee simple, and subject to the covenant that N. O. should build four messuages on the land within a given time and according to a plan, &c.; see Prec. I of this Group*):

That four houses have been built on land.

(2) Pursuant to the covenant for that purpose contained in the Building Grant the said N. O. erected four messuages on the land comprised in that Grant:

Sale of the houses at apportioned parts of the rentcharge.

(3) The said N. O. has lately sold and conveyed the said messuages to the several parties hereto (hereinafter called the Purchasers) at apportioned parts of the said yearly rentcharge of £12, and subject to the covenants and conditions contained in the Building Grant, and on the grantee's part to be observed and performed so far as the same relate to the premises respectively:

Particulars of premises sold, &c., contained in schedule.

(4) Short particulars of the properties sold and conveyed to the Purchasers as aforesaid, the dates of their respective conveyances, and the amount of the apportioned yearly rentcharges reserved thereby respectively are respectively mentioned opposite to their names in the Schedule hereto:

Agreement for mutual covenants.

(5) Upon the treaty for the aforesaid sales it was agreed that the Purchasers should enter into such mutual covenants as are hereinafter contained:

NOW THIS DEED WITNESSETH as follows:—

Each Purchaser covenants with the others to pay apportioned rentcharge, and to observe covenants

1. IN pursuance of the said agreement and in consideration of the premises, each of the Purchasers hereby covenants with the others of them and with each of them in manner following, that is to say That each of the Purchasers, and the persons deriving title under him—

(1) Will henceforth in respect of the property conveyed to him as aforesaid pay the apportioned yearly rentcharge set opposite to his name in the fourth column of the Schedule hereto

and duly observe and perform the covenants contained in the Building Grant and on the grantee's part to be observed and performed so far as the same relate to the said property ; relating to premises conveyed to him, and to indemnity against apportioned rent and covenants.

(2) Will at all times hereafter keep indemnified the other Purchasers, and the persons respectively deriving title under them, and every of them and their respective estates and effects, from and against all claims and demands whatsoever on account of the non-payment of the said apportioned rentcharge or any part thereof, or any breach of the said covenants so far as the same relate to the said property.

2. EACH of the Purchasers hereby charges the property respectively conveyed to him as aforesaid with the payment of whatever money shall become payable by him or the persons deriving title under him or by his estate and effects under the foregoing covenant. Charge.

IN WITNESS, &c.(*c*)

THE SCHEDULE.

Name of Purchaser.	Particulars of Property.	Date of Conveyance.	Apportioned Rentcharge

No. X.

CONVEYANCE *of a* PERPETUAL RENTCHARGE *to* PURCHASER. (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN G. H., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS :— Parties.

(1) (*Recite and define the "Building Grant," as in Prec. No. I of this Group, by the Vendor to A. B.*) :

(*c*) If the conveyance to each purchaser is in the proper form and contains the usual cross covenants and powers of distress, with or without cross charges, no deed of mutual covenants is required, for under L. P. Act, 1925, s. 77 (5), the benefit of the cross covenants runs with the estate of the covenantee ; the equitable apportionment will under s. 190 be binding on all persons except the owner of the entire rentcharge, and under that section the powers of distress will be valid. Hence a deed of mutual covenants is only required when the conveyances are in some way defective. Deed of mutual covenants when required.

As to registered land, see note at the head of this Group. A note of this deed can be entered on the register of each title affected by the rent. Registered land.

Agreement for sale.

(2) The Vendor has agreed to sell the said yearly rentcharge of £——, and the benefit of all securities for the same, to the Purchaser at the price of £—— :

Conveyance of perpetual rentcharge.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration, &c. (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

ALL THAT the said perpetual yearly rentcharge of £—— limited to the Vendor in fee simple by the Building Grant and the benefit of the covenants by the said A. B. contained in that Deed and all powers and remedies whatsoever (including the power of re-entry) vested in the Vendor by virtue of the Building Grant or otherwise for enforcing the payment of the said rentcharge and the observance and performance of the said covenants,

Habendum

TO HOLD unto the Purchaser in fee simple.

[2. *Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.(*d*)

No. XI.

RELEASE *of* PERPETUAL RENTCHARGE *and of* BUILDING *and other* COVENANTS *to the* OWNER *in fee of the* FREEHOLDS *out of which the rent* IS PAYABLE.(*e*) (*Legal Estate.*)

Parties.

THIS RELEASE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part : WHEREAS :—

Building grant of land in fee reserving a yearly rentcharge.

(1) and (2) (*Recite "Building Grant" by the Vendor to Purchaser at a rentcharge of* £5, *and covenants by Purchaser as to building and otherwise, and that the Purchaser has erected a house on the land*) :

Agreement to release.

(3) The Purchaser has agreed to purchase from the Vendor the said rentcharge to the intent that it may henceforth cease to be payable at the price of £—— :

Registered land.

(*d*) As to registered land, see note at the head of this Group. In this case if a proprietor of the rent is registered, the conveyance can be effected by a transfer in Form No. 19 without recitals. If the rent is only noted as an incumbrance, the above Precedent should be used. It will not require registration.

Right of redemption.

(*e*) The owner of the land is given a right to redeem by L. P. Act, 1925, s. 191. When the title to the land is split up, the different owners may find their titles so complicated that it may frequently be worth their while to arrange to redeem the head rent, and so extinguish the different parts of the rent which each pays.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys and releases unto the Purchaser in fee simple, Release of rentcharge.

ALL THAT the said yearly rentcharge of £—— reserved to the Vendor in fee simple by the Building Grant, and all powers and remedies for recovering the same when in arrear, and all covenants and conditions contained in that Deed and on the part of the Purchaser or the persons deriving title under him, to be observed and performed, Parcels.

TO THE INTENT that the said yearly rentcharge shall cease to be payable and forthwith merge and be extinguished in the freehold of the land comprised in the Building Grant, and that the said covenants and conditions shall cease to be enforceable. [*Add Form* 8, *p.* 483, *if required.*] Merger of rentcharge.

IN WITNESS, &c.(*f*)

GROUP E.—CONVEYANCES ON SALES IN CONSIDERATION OF DETERMINABLE RENTCHARGES; GRANTS AND RELEASES OF DETERMINABLE ANNUITIES; AND CONVEYANCE IN CONSIDERATION OF A LEASE TO BE GRANTED TO VENDOR (WITH FORM OF LEASE).

No. I.

CONVEYANCE (*a*) *of* FREEHOLDS *to a* PURCHASER *in* CONSIDERATION *of a* CAPITAL SUM, *and of a* LIFE ANNUITY. (*Legal Estate.*)

THIS VESTING DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. Parties.

(*f*) In the case of registered land, see note at the head of this group. Rules 200 to 203 prescribe the evidence for and method of noting the determination of a rentcharge on the register. Registered land.

(*a*) Where the consideration or part of the consideration consists of money payable periodically during a life or lives the conveyance is chargeable with *ad valorem* duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the date of the instrument: Stamp Act, 1891, s. 56 (3). Hence the stamp on this transaction will be £10 in respect of the gross sum, and £2 10*s.* in respect of the annuity, see also Fin. (1909-10) Act, 1910, s. 73; but under S. L. Act, 1925, s. 4 (3), (2), the trust instrument has to bear any *ad valorem* stamp duty which may be payable (whether by virtue of the vesting deed or otherwise) in respect of the settlement; thus this vesting deed should bear a £10 stamp and be adjudicated and the trust instrument (see next Precedent) the £2 10*s.* in respect of the annuity, for the transaction is only a settlement by reason of the annuity. Stamp.

(hereinafter called the Purchaser), of the 2nd part, and The —— Bank Ltd., whose registered office is at —— (hereinafter called the Trustees), of the 3rd part :

Agreement for sale.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the lands hereinafter described, and has agreed to sell the same to the Purchaser in consideration of the sum of £1,000 and an annuity of £20, payable to the Vendor during his life and to be secured to him under the trusts of the Trust Instrument hereinafter mentioned :

Conveyance.

NOW THIS DEED WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £1,000 now paid by the Purchaser to the Vendor (*the receipt, &c.*), and also in consideration of the Trust Instrument hereinafter mentioned, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

ALL, &c. (*Forms, Sec. II, p.* 471, *et seq.*),

TO HOLD unto the Purchaser in fee simple Upon the trusts declared concerning the same by a Trust Instrument bearing even date with and intended to be executed contemporaneously with these presents, and to be made between the same parties and in the same order.

S. L. Act trustees.

2. THE Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

3. THE following additional or larger powers are conferred by the said Trust Instrument in relation to the settled land and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life (namely)—the powers which are by that Act made exercisable subject to the leave of the court may be exercised with the consent of the Trustees without any order of the court.

If preferred, a 10*s.* stamp can be placed on the vesting deed and adjudicated and the whole *ad valorem* stamp placed on the trust instrument.

Life rentcharge. Modes of creation.

After 1925 a life annuity or rentcharge cannot be legally limited out of land, it can only be created by way of trust. The transaction being for money's worth does not immediately create a settlement within S. L. Act, 1925, s. 1 ; but it comes within s. 21 of that Act ; hence as the purchaser could the next day create a settlement by appointing a trust corporation to be S. L. Act trustees under that section it saves costs to carry out the transaction as in the text rather than to convey the land to the purchaser on trust to pay the annuity and subject thereto in trust for himself. An alternative method (see L. P. Act, 1925, s. 2 (2)) would be to convey the land to a trust corporation on trust for sale and by a separate deed to declare the trusts of the proceeds and of the rents and profits until sale, viz., to pay the annuity and subject thereto for the purchaser absolutely.

Alternative method.

4. THE power of appointing a new trustee or new trustees of the settlement is vested in the Purchaser during his life. Power to appoint new trustees.

[5. *Add acknowledgment, &c., as to documents, if required, Form No.* 4, *Sec. III, p.* 480, *supra.*]

IN WITNESS, &c.(*b*)

No. II.

TRUST INSTRUMENT *for securing an annuity to the* VENDOR *during his life and subject thereto for the* PURCHASER *in fee simple ; with* POWER *for* PURCHASER *to buy an* ANNUITY *in* SUBSTITUTION.(*c*) (*Equitable Interests.*)

THIS TRUST INSTRUMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (hereinafter called the Purchaser), of the 2nd part, and the —— Bank Limited whose registered office is at —— (hereinafter called the Trustees), of the 3rd part : WHEREAS :— Parties.

(1) By a Deed (hereinafter called the Vesting Deed) bearing even date with but executed contemporaneously with these presents and made between the same parties and in the same order in consideration [of a sum of £—— paid by the Purchaser to the Vendor and] of a Trust Instrument of even date (meaning these presents) certain freehold property situated at —— in the County of —— was conveyed to the Purchaser in fee simple upon the trusts declared concerning the same by a trust instrument of even date therein referred to (meaning these presents). Conveyance on sale and vesting deed.

(2) As [part of] the consideration for the Vesting Deed it was agreed that a yearly rentcharge of £20 should be secured to the Vendor during his life [*or that rentcharges should be secured* Objects of the trust instrument

(*b*) In this Precedent it is assumed that the bank is a trust corporation authorised to act as sole trustee of a settlement and that the vendor is satisfied that the bank should act as such trustee : S. L. Act, 1925, ss. 21 and 94. Trust corporation sole trustee of a settlement

In the case of registered land, the conveyance will be effected by an Instrument of Transfer in Form 21 in the Rules. There will be no recitals. The declaration by the transferor will contain the particulars of the trusts given in paras. 1 to 4 of the above Precedent. Registered land.

(*c*) As to the stamp, see note to last Precedent. The provisions for securing the annuity do not attract additional duty : Stamp Act, 1891, s. 56 (4). Stamp.

Any equitable interests can be secured to the vendor, his wife and family or otherwise by this deed according to the contract. Variations. Where other equitable interests are to be reserved.

to the Vendor and his wife—successively during their lives or whatever other provision is to be made as the case may require] : NOW in consideration of the Vesting Deed and of the premises THIS DEED WITNESSETH as follows :—

Limitation of rentcharge for the Vendor for life and subject thereto for the Purchaser in fee simple.

1. THE Purchaser hereby agrees that he will stand possessed of the property comprised in the Vesting Deed UPON TRUST that the Vendor shall receive out of the premises during the residue of his life a yearly rentcharge of £20 to commence from the date hereof and to accrue from day to day but to be paid by equal half-yearly payments on the —— day of —— and the ——day of —— in every year the first payment [or proportionate payment] to be made on the —— day of —— next if the Vendor shall be then living. AND subject to the said rentcharge and to the statutory and other powers for recovery and compelling payment thereof IN TRUST for the Purchaser in fee simple.

S. L. Act trustees.

2. THE Trustees are the trustees hereof for the purposes of the Settled Land Act, 1925.

Additional powers.

3. THE powers which are by that Act made exercisable subject to the leave of the court may be exercised by the Purchaser and the persons deriving title under him in reference to the premises with the consent of the trustees without any order of the court.

Power to appoint new trustees.

4. THE powers to appoint a new trustee or new trustees of these presents shall be vested in the Purchaser during his life.

Covenant by Purchaser to pay annuity, and to insure against fire

5. THE Purchaser hereby covenants with the Vendor that the Purchaser or the persons deriving title under him, will pay to the Vendor the said yearly rentcharge of £20 at the times and in the manner hereinbefore appointed for payment of the same, and also will, so long as the said yearly rentcharge shall remain charged on any buildings subject to the trusts of these presents, keep the same insured against loss or damage by fire in some public insurance office or with insurers at Lloyd's approved by the Vendor, [in the joint names of the Vendor and the Trustees] in a sum not less than two-thirds of the amount required to rebuild the same in case of total destruction, and will on demand produce the policy or policies of insurance for the time being in force, and the receipts for the premiums in respect thereof, to the Vendor or the persons deriving title under him.

Power for Purchaser to buy annuity for Vendor for life.

6. PROVIDED that if the Purchaser or the persons deriving title under him shall at any time during the life of the Vendor purchase in the name of the Vendor a Government annuity of £20 for the life of the Vendor, or a like annuity from any

insurance office approved by the Vendor, so that the first half-yearly payment of such annuity shall be made payable within six months after the day of payment of the yearly rentcharge hereby limited last preceding the day of the purchase of such annuity, and if the Purchaser or the persons deriving title under him shall, on the purchase of such annuity, have paid all arrears of the yearly rentcharge hereby limited up to and including the last-mentioned half-yearly day, and all costs, charges and expenses due in respect of the same yearly rentcharge, then and in such case—

(i) the Vendor shall accept the annuity so purchased in substitution for the said yearly rentcharge, and thereupon the said rentcharge shall determine and merge in the fee simple of the property subject to the trusts hereof and

(ii) the Vendor shall on demand by the Purchaser produce the requisite evidence to the Trustees to prove that such annuity has been purchased and

(iii) the Trustees shall at the request and cost of the Purchaser or the persons deriving title under him execute a deed of discharge in accordance with section seventeen of the Settled Land Act, 1925, but subject as provided in that section.

IN WITNESS, &c.

No. III.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* CONSIDERATION *of an* ANNUITY PAYABLE *to the* VENDOR *and his* WIFE *successively for life and* SECURED *by the* PURCHASER'S BOND *or by the* GRANT *of annuities by an* INSURANCE SOCIETY.(*d*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, Parties.

(*d*) See notes to Prec. I of this Group. The stamp on this deed will be £12: Stamp Act, 1891, s. 56 (3). A separate instrument for securing the payments is not chargeable with a higher duty than 10*s.*: *ib.*, sub-s. 4. Hence the bond will bear a 10*s.* stamp. Stamp.

If instead of a bond or the grant of annuities the life annuities are to be secured on the land this should either be done by a vesting deed and trust instrument as in Precs. I and II, *supra*, or this conveyance should be converted into a conveyance to two or more individuals (not exceeding four) or to a Variations where the annuities are to be secured on the land.

&c. [*or* the —— Insurance Society Ltd., whose registered office is at ——] (hereinafter called the Purchaser[s]), of the other part:

Agreement for sale in consideration of annuity.

WHEREAS:—

(1) The Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described, and has agreed to sell the same to the Purchaser in consideration of an annuity of £100 to be paid to the Vendor during his life, and after his death to E. B., his wife, if she survives him, during the residue of her life, and to be secured by the bond of the Purchaser [*or* as hereinafter appearing]:

Bond to secure annuity.

(2) Immediately before the execution of these presents the Purchaser has executed to the Vendor his bond in a sufficient penalty, bearing even date with these presents, subject to a condition thereunder written for making void the same upon payment by the Purchaser, his estate and effects, of an annuity of £100 to the Vendor during his life, and after his death to the said E. B., if she survives the Vendor, during the residue of her life, and to be paid half-yearly at the times therein mentioned:

[Grant of annuity by society.]

[(2) Immediately before the execution of these presents the Purchasers have by a Grant bearing even date herewith, and made between the Purchasers of the one part and the Vendor of the other part granted to the Vendor an annuity of £100 during his life and to the said E. B., if she survives the Vendor, an annuity of £100 during the residue of her life, the said annuities to be paid as therein mentioned:]

Conveyance.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the annuity of £100 secured by the said bond [*or* of the Grant of the said annuities], the Vendor, As Beneficial Owner, hereby conveys, &c. (*Conveyance of freeholds to Purchaser* [*s*] *in fee simple.*)

IN WITNESS, &c.(*e*)

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trust corporation on trust for sale, the trusts of the proceeds and the rents and profits to be declared as in next Precedent.

Annuitant should see that proper trustees are appointed.

It is useless to purport to grant a life annuity or rentcharge to issue out of land, such an annuity would only create an equitable charge (capable of being overreached by means of a settlement *ad hoc* or a trust for sale *ad hoc*) and in the meantime would have to be protected by the registration of a land charge. It is more satisfactory for the annuitant to make a bargain as to the trustees who are to act either as S. L. Act trustees or as trustees for sale.

Registered land.

(*e*) In the case of registered land, the conveyance will be effected by a transfer (Form No. 19 in the Rules), without recitals, from A. B. to C. D.

No. IV.

DECLARATION *of* TRUST *of proceeds of sale of land conveyed on trust for sale by a deed of even date to secure annuities to the* VENDOR *and his* WIFE *for their successive lives.* (*Equitable Interests.*)

Parties

THIS DECLARATION OF TRUST is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (hereinafter called the Purchaser), of the 2nd part, and the —— Bank Ltd., whose registered office is at —— (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Conveyance on trust for sale.

(1) By a Conveyance of even date herewith, and made between the same parties as these presents, in consideration of a Declaration of Trust of even date (meaning these presents) certain freehold land at —— was by the direction of the Purchaser conveyed by the Vendor to the Trustees in fee simple Upon trust to sell the same with power to postpone the sale and to stand possessed of the net proceeds of sale and of the rents and profits until sale Upon the trusts of the said deed of even date therewith (meaning these presents):

Terms of sale.

(2) The said Conveyance was made in consideration of the annuities hereinafter mentioned being secured to the Vendor and his wife E. B., successively, in manner hereinafter appearing:

Declaration of trust.

NOW in consideration of the said Conveyance of even date THIS DEED WITNESSETH as follows:—

1. THE Purchaser hereby directs and the Trustees hereby agree that the Trustees shall and will stand possessed of the net proceeds of sale and other capital money arising under the said Conveyance and the investments for the time being representing the same and of the net rents and profits and income of the premises—

Successive annuities for the Vendor and his wife

(i) UPON TRUST to pay thereout to the Vendor during his life an annuity of £—— to commence from the date hereof and to accrue from day to day but to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year the first payment to be made on the —— day of —— next if the Vendor shall be then living:

(ii) UPON TRUST if the said E. B. survives the Vendor to pay out of the premises to her during the residue of her life a like annuity of £—— to commence from the death of the Vendor and to accrue from day to day but to be paid on the half-yearly

days aforesaid, the first proportionate payment to be made on the first of the said half-yearly days which occurs after the death of the Vendor if the said E. B. shall be then living :

(iii) AND SUBJECT to the said annuities as to both the capital and income of the premises IN TRUST for the Purchaser absolutely.

Covenant to pay annuities.

2. THE Purchaser hereby covenants with the Vendor and also separately with the Trustees that the Purchaser, or the persons deriving title under him, will duly pay the respective annuities hereinbefore made payable on the days and in the manner aforesaid.

IN WITNESS, &c.(*f*)

No. V.

GRANT *by a* REMAINDERMAN *in fee of an* ANNUITY *charged on the* LAND *to take effect* AFTER *the* DETERMINATION *of a* PRIOR LIFE INTEREST *and during the residue of the* LIFE *of the* GRANTOR WITH POLICIES.(*g*) (*Equitable Interests.*)

Parties.

THIS GRANT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, the —— Insurance Society Ltd. whose registered office is at —— (hereinafter called the Purchasers), of the 2nd part, and E. B., of —— (hereinafter called the Trustee), of the 3rd part : WHEREAS :—

Settlement, &c., under which E.B. is tenant for life and the Vendor remainderman in fee.

(1) Under, First, a Settlement dated, &c., made, &c., Secondly, a Disentailing Assurance dated, &c., and Thirdly, a Vesting Deed dated, &c., and made, &c., the lands hereinafter described are now vested in E. F. (who was born on the —— day of ——) in fee simple Upon trust for the said E. F., during his life with remainder In trust for the Vendor (who was born on the ——day of ——) in fee simple And X., of, &c., Y., of, &c., and Z., of, &c., are the present Trustees of the said Settlement for the purposes of the Settled Land Act, 1925 :

Powers of trustees for sale.

(*f*) The trustees have all the statutory powers of a tenant for life and can invest the proceeds of sale in any manner authorised (S. L. Act, 1925. s. 73) for capital money : L. P. Act, 1925, s. 28.

Notice.

(*g*) The grant of this annuity does not prevent the tenant for life from selling the land under the S. L. Act, but under L. P. Act, s. 137, notice in writing (in duplicate) must be served on the S. L. Act trustees and if necessary

(2) The Vendor is entitled, First, to the fully paid-up Policy effected with the Purchasers first hereinafter assigned for securing payment of the sum of £—— if the Vendor dies in the lifetime of the said E. B. And Secondly, to the Policy on his own life effected with the Purchasers for securing payment on his death of the sum of £——: Policy against death of Vendor in lifetime of tenant for life and Life Policy.

(3) The Vendor has agreed to assign the said policies and to grant to the Purchasers an annuity of £—— during the residue of the life of the Vendor, to commence from the death of the said E. B. and to be secured in manner hereinafter appearing, at the price of £——: Agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby grants unto the Purchasers Grant of a reversionary annuity.

One yearly sum or rentcharge of £——, to commence from the death of the said E. B., and to be paid thenceforth during the residue of the life of the Vendor and to accrue from day to day but to be paid free from all deductions except income tax, by equal half-yearly payments in every year, the first payment to be made at the end of six months from the death of the said E. B., and the said rentcharge shall stand charged on and be issuing out of All the lands described in the Schedule hereto and on or out of all other (if any) the property, capital money and investments which are now or may at any time hereafter become subject to the limitations or trusts of the recited Settlement and the income thereof.

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endorsed on the settlement. It is also expedient to give notice to the tenant for life as estate owner of the settled land. On his death representation to the settled land will be taken out by the S. L. Act trustees as his special representatives, who will, subject to seeing that the duties will be provided for, assent in writing to the land vesting in the remainderman. The rentcharge can be redeemed under L. P. Act, 1925, s. 191. Until it is redeemed it is expedient that the vendor should treat himself as a tenant for life under S. L. Act, 1925, s. 21, and call on the trustees to execute a vesting deed nominating themselves S. L. Act trustees, to enable the vendor to deal with the land free from the rentcharge under that Act. For this purpose the consent of the Society to the trustees acting should be obtained. Redemption of rentcharge; vesting deed pending redemption

In the case of registered land, the rentcharge being an equitable interest which can be overreached by a disposition by the owner of the prior life interest, who will be the registered proprietor, no protective entry should be made on the register until, on the determination of the prior life interest, the arrangements described above are made; the special representatives will then execute a transfer in Form No. 21 in the Rules, adapted to suit the circumstances. Registered land.

Covenant to pay reversionary rentcharge.

2. THE Vendor hereby covenants with the Purchasers to pay the said reversionary yearly rentcharge of £— in manner and at the times in and at which the same is hereinbefore made payable.

Assignment of policies.

3. (1) FOR the consideration aforesaid the Vendor, As Beneficial Owner, by the direction of the Purchasers hereby assigns unto the Trustee :

FIRST, ALL THAT the fully paid up policy effected with the Purchasers dated —— Nod. —— for assuring payment of the sum of £—— on the death of the Vendor in the lifetime of the said E. B.

AND SECONDLY, ALL THAT policy effected with the Purchasers on the life of the Vendor dated —— Nod. —— at an annual premium of £—— for securing payment on the death of the Vendor of the sum of £—— TOGETHER with the full benefit of the said policy

TO HAVE AND RECEIVE the said policies unto the Trustee IN TRUST for the Purchasers absolutely.

(2) THE Purchasers may by deed remove the Trustee or his successors in office from the trust aforesaid

(3) FOR the purposes of this clause the statutory power to appoint new trustees shall be vested in the Purchasers.

Power to re-purchase the life policy.

4. IF the Vendor survives the said E. B. he may at any time after not less than—— yearly payments of the rentcharge hereby created shall have been duly paid by notice in writing of his desire given to the Purchasers during the lifetime of the Vendor and subject to paying the surrender value shown in the books of the Purchasers at the date of such notice re-purchase the policy secondly hereinbefore described if the same shall be subsisting :

PROVIDED that nothing herein contained shall render it obligatory on the Purchasers to keep on foot the said policy.(*h*)

IN WITNESS, &c.

THE SCHEDULE.

Particulars of the lands hereinbefore charged.

(*h*) The object of the survivorship policy—the single premium will be paid out of the purchase-money—is to enable the society to cover the risk of the vendor dying in the lifetime of the tenant for life. The object of the life policy is to enable the society to re-insure against the risk of the vendor dying shortly after the rentcharge becomes payable and before sufficient payments have been made to recoup the society. As to merger, see L. P. Act, 1925, s. 185.

No. VI.

RELEASE *of* PART *of* LAND *charged with a* PERPETUAL RENTCHARGE *with a view to a* SALE.(*i*) (*Legal Estate.*)

THIS RELEASE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Annuitant), of the one part, and C. D., of, &c. (hereinafter called the Estate Owner), of the other part: Parties.

WHEREAS:—

(1) (*Recite Grant under which* "the land described in the Schedule hereto, with other property," *is charged with a perpetual rentcharge payable to Annuitant, and subject thereto is vested in the Estate Owner in fee*): That land subject to rentcharge remains vested in Estate Owner.

(2) All the lands comprised in the recited Grant still remain vested in the Estate Owner in fee simple, and save for the said rentcharge are free from incumbrances, as the Estate Owner hereby declares:(*j*) Declaration against incumbrances.

(3) The Estate Owner being about to sell the lands described in the Schedule hereto, has requested the Annuitant to release the same from the said yearly rentcharge of £—— limited to him as aforesaid, which the Annuitant has agreed to do, being satisfied that the other property comprised in the recited Grant is a sufficient security for the said rentcharge: Agreement to release.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the premises, the Annuitant as Mortgagee, hereby releases Release of lands in Schedule from rentcharge.

ALL AND SINGULAR the lands and property described in the Schedule hereto from the said yearly rentcharge of £—— limited to the Annuitant by the recited Grant and from all claims and demands whatsoever in respect of the same or any part thereof:

(*i*) Under L. P. Act, 1925, s. 70, the release from a rentcharge of part of the land charged therewith does not extinguish the whole rentcharge, but operates only to bar the right to recover any part of the rentcharge out of the land released, without prejudice to the rights of the persons interested in the land remaining unreleased, and not concurring in or confirming the release. Rentcharge may be released as to a part of the property.

(*j*) It is important for the releasor to ascertain that this is the case, because, if the other lands are vested in some person who does not concur in the release, its effect will be that a proportionate part only of the rentcharge can afterwards be recovered against the unreleased land: L. P. Act, 1925, s. 70; *Booth* v. *Smith* (1884), 14 Q. B. D. 318; 54 L. J. Q. B. 119; *Price* v. *John* [1905] 1 Ch. 744; 74 L. J. Ch. 469; Dart, 7th ed., 955. Effect of partial release of rentcharge where the land is incumbered.

If the property is incumbered the proper course is to arrange for an apportionment and release under L. P. Act, 1925, s. 191.

The above Precedent will apply, with slight verbal alterations, to registered land. It should be noted on the register under rr. 200 to 203, and the heading applicable to transfers should be used. Registered land.

Proviso saving liability of other lands.

2. PROVIDED that the property comprised in the recited Grant (other than the lands hereby released) shall remain subject to the entirety of the said yearly rentcharge, and the powers and remedies for enforcing payment thereof, as if these presents had not been executed.

[3. *Add acknowledgment by Annuitant, of the right of the Estate Owner to production of the recited Grant, if required, Form No.* 4, *Sec. III, p.* 480.]

IN WITNESS, &c.

THE SCHEDULE.

Particulars of lands hereby released.

No. VII.

RELEASE *of the* WHOLE *of* LANDS *charged with a* RENTCHARGE *for* LIFE *with a view to a* SALE *on the purchase of an* ANNUITY *in lieu of the* RENTCHARGE.(*k*) (*Equitable Interest.*)

Parties.

THIS RELEASE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Annuitant), of the one part, and C. D., of, &c. (hereinafter called the Estate Owner), of the other part: WHEREAS:—

Seisin subject to rentcharge.

(1) The Estate Owner is seised in fee simple in possession of the lands described in the Schedule hereto subject to a yearly rentcharge of £ payable thereout to the Annuitant during his [her] life charged by a Deed dated, &c., and made, &c., but otherwise free from incumbrances:

Purchase of annuity and agreement to release rentcharge to facilitate sales.

(2) Negotiations are in progress for a sale of the said lands, and in order to facilitate such sale and to secure to the Annuitant the payment of the said yearly sum of £— the Estate Owner has purchased in the name and for the residue of the life of the Annuitant an annuity of £—— from the —— Insurance Society

Discharge of life annuities.

Over-reaching of annuities.

(*k*) This takes the place of a release under L. P. Act, 1925, s. 191, or of payment into court under s. 50. Under s. 191, as the rent is not perpetual, a government annuity for the period of the rent would have to be purchased. Under s. 50 a sufficient sum would have to be paid into court to keep down by means of the income the annuity in question. If the rentcharge is created for money's worth it could be overreached by means of a settlement *ad hoc* under S. L. Act, 1925, s. 21, or a trust for sale *ad hoc* under L. P. Act, 1925, s. 2 (2). If it is a family charge under S. L. Act, 1925, s. 1, then there is an ordinary settlement within that Act, for the estate owners have the powers of a tenant for life under s. 20, and unless the rentcharge is released title must be made under that Act; a legal estate cannot otherwise be conveyed: s. 13; and see L. P. Act, 1925, s. 42.

Registered land.

The above Precedent will apply, with slight verbal alterations, to registered land. If there is any protective entry on the register, it should be removed.

payable on the half-yearly days and in like manner as the said yearly rentcharge is now payable under the provisions of the recited Deed, and in consideration thereof the Annuitant has agreed to execute such release as is hereinafter contained :

Discharge of duty.

(3) All duties (if any) which would otherwise become payable on the cesser of the said rentcharge have been duly commuted or discharged :

Release of rentcharge.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the annuity so purchased as aforesaid, the Annuitant, As Mortgagee, hereby releases unto the Estate Owner :

ALL THAT the said yearly rentcharge of £— charged by the recited Deed upon the lands described in the Schedule hereto,

TO THE INTENT that the said rentcharge shall forthwith merge and be extinguished in the freehold and capital of the property affected thereby.

IN WITNESS, &c.

THE SCHEDULE.

Particulars of lands affected by the yearly rentcharge hereby released.

No. VIII.

CONVEYANCE *of a* HOUSE *and* PARK *by an* OWNER IN FEE SIMPLE *to a* PURCHASER, *it being part of the* ARRANGEMENT *that the* VENDOR *shall have a* LEASE *of the property for a* TERM DETERMINABLE *by notice on either side after his death.* (*Legal Estate.*)(*l*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Seisin of Vendor and

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the property hereinafter described, and has

(*l*) In order that the vendor may take a legal term, in effect for his life, a term of years absolute should be demised terminable by notice on either side after his death ; this would be the result of an attempt to grant a lease, at a rent for life : L. P. Act, 1925, s. 149 (6). Unless a rack rent is reserved a claim for duty on the termination of the lease may arise. If a life interest were reserved the transaction would have to be carried out by a vesting instrument and trust deed under S. L. Act, 1925, s. 4, otherwise no legal estate would be passed, nor could the land be dealt with till a vesting instrument was executed : *ib.*, s. 13. The reservation of a life interest would confer on the vendor the statutory powers of a tenant for life under which he could deprive the purchaser of the actual property ; leaving him only investments representing the purchase-money. On completion the lease will be exchanged for the conveyance.

How arrangement for reserving life interest to vendor should be carried out.

agreement for sale in consideration of a sum of money and of a Lease to be granted by Purchaser.

agreed to sell the same to the Purchaser in consideration, first, of the sum of £——, and, secondly, of a Lease,(*m*) already prepared and intended to bear even date with but to be executed after these presents, and to be made between the Purchaser of the one part and the Vendor of the other part, being a Lease of the same property to the Vendor for the term of ninety years, terminable by notice on either side after the death of the Vendor, at the yearly rent of £—— :

NOW THIS DEED WITNESSETH as follows :—

Conveyance.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*), and of the Lease to be granted by the Purchaser to the Vendor as aforesaid, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

All those, &c. (*Forms, Sec. II, p.* 471, *et seq.*),

Habendum.

To hold unto the Purchaser in fee simple.

Covenant by Purchaser to grant a lease.

2. The Purchaser hereby covenants with the Vendor that the Purchaser will forthwith by the recited Lease of even date herewith demise the property hereby conveyed to the Purchaser for the term, at the rent, and subject to the covenants and conditions therein contained.

[3 and 4. *Add acknowledgment, &c., as to documents, if required, Form No.* 4, *Sec. III, p.* 480. *Also Form No.* 8, *p.* 483, *if required.*]

In witness, &c.(*n*)

No. IX.

LEASE *for a term terminable by* Notice *of a* House *and* Park *from* Purchaser *to* Vendor *pursuant to a* Covenant. (*Legal Estate.*)

Parties.

THIS LEASE made, &c., Between C. D., of, &c. (hereinafter called the Lessor, which expression, where the context so admits, includes the persons deriving title under him) of the one part, and A. B., of, &c. (hereinafter called the Tenant, which expression, where the context so admits, includes his executors, administrators and assigns), of the other part

WITNESSETH AND IT IS HEREBY AGREED as follows :—

Demise by Purchaser to Vendor for terminable term.

1. In pursuance of a covenant contained in a Conveyance bearing even date with but executed before these presents, and made between the Tenant of the one part and the Lessor of the

(*m*) See next Precedent for a form of lease.

Registered land.

(*n*) In the case of registered land, the conveyance will be effected by a transfer (in Form No. 19 in the Rules) without recitals, adding after the

other part (being a conveyance of the property hereinafter described to the Lessor), and in consideration of the rent and the Tenant's covenants hereinafter contained, the Lessor hereby demises unto the Tenant,

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*), Parcels.

TO HOLD unto the Tenant from the date of these presents for the term of ninety years terminable by notice on either side at any time after the death of the Tenant in manner hereinafter provided YIELDING AND PAYING therefor the yearly rent of £—— payable without any deduction except for landlord's property tax and tithe rentcharge by equal half-yearly payments on the —— day of —— and the —— day of —— during the subsistence of the said term. Habendum.

2. THE Tenant hereby covenants with the Lessor in manner following (that is to say) :—(*o*) Tenant's covenants.

(1) That the Tenant will pay the said rent at the times and in manner aforesaid and also all rates taxes and other assessments imposed on the property or the landlord or tenant in respect thereof during the said term except tithe rentcharge.

(2) That the Tenant will, at his own expense, during the term hereby granted keep in good and complete repair and condition the capital messuage called ——, and all other the buildings and erections for the time being upon the premises hereby demised, and also all the gates, stiles, and fences upon the premises.

(3) That the Tenant will, at the like expense, during the term hereby granted adequately insure and keep insured the said capital messuage, and all other the buildings and erections for the time being standing upon the premises, against loss or damage by fire, in some office or with underwriters to be approved by the Lessor, and also will, when required, produce to the Lessor or his agent the policies of such insurance, and the receipts for the current year's premiums paid thereon: And also will forthwith, on every occasion on which money shall be received by virtue of any such insurance, lay out and expend the same (after deducting necessary expenses) in properly

money consideration "and of a lease by (*Purchaser*) to (*Vendor*) for ninety years terminable by notice as therein provided."

(*o*) There should be a rent, see S. L. Act, 1925, s. 20 (1) (iv), otherwise the lessee might have the powers of a tenant for life, though as the term is terminable by notice and not merely on life *semble* the sub.-s. would not apply. Necessity for rent.

repairing, rebuilding, or reinstating the buildings which shall have been destroyed or damaged, and will make good any deficiency out of his own money.

(3) That the Tenant will not during the term hereby granted fell or cut down any timber or timber-like trees standing or growing on the premises hereby demised, unless the same may be required for renewing or repairing the park pailings, and then only such as may be properly and fairly felled or cut down without detracting from the enjoyment of the said mansion house as a place of residence, or from the beauty of the premises hereby demised, or unless such timber or trees shall be of such age and in such state as that the same considered as ornamental timber only may properly require to be felled or cut down with a view to the enjoyment of the said mansion house as a place of residence or to the beauty of the premises.

Vendor to give notice before cutting timber.

3. (1) THE Tenant shall give to the Lessor at least one month's previous notice in writing of the intention of the Tenant to cut any timber or timber-like trees under the provisions hereinbefore contained.

(2) THE trees intended to be cut or felled shall be marked and shall be shown when required to some person appointed for the purpose by the Lessor.

(3) IF such person shall, on behalf of the Lessor, object to the felling or cutting of any trees, as being improper and coming within the restrictions aforesaid, the same shall not be felled or cut unless and until it shall have been decided by arbitration, that the same may be felled or cut.

Arbitration clause.

4. IF any question or difference shall arise between the Lessor and Tenant as to whether any timber or timber-like trees are such as may be properly felled or cut down having regard to the covenant and restrictions aforesaid, such question or difference shall be referred to a single arbitrator [*or* to two arbitrators, one to be appointed by each party], subject to the provisions of the Arbitration Act, 1889.

5. (*Add power to re-enter on breach of covenant. See Prec. of Leases in Vol. II.*)

Power to determine by notice.

6. (1) AT any time after the death of the Tenant—

(i) His executors or administrators, or other person in whom the term hereby granted is vested, by giving notice to the Lessor, or

(ii) The Lessor by giving notice to the persons deriving title under the Tenant or affixing the same on the premises

may require that the term hereby granted shall cease on either of the half-yearly days hereinbefore fixed for payment of rent which occurs after the date of service of the notice:

(2) PROVIDED that any such notice shall be served not less then one month before the half-yearly date on which the term hereby granted is to determine.

(3) SUBJECT to proper notice being served as aforesaid, the said term shall determine on the half-yearly day mentioned in the notice, but without prejudice to the rights and remedies of the Lessor in respect of non-payment of rent or breach of any of the Tenant's covenants or conditions.(*p*)

IN WITNESS, &c.

GROUP F.—CONVEYANCES ON SALES OF OR RESERVING MINES AND MINERALS.(*a*)

No. I.

CONVEYANCE *of* MINES *and* MINERALS *without* SURFACE RIGHTS. VARIATIONS *where powers to* LET DOWN *or* ENTER *upon the* SURFACE *subject to making* COMPENSATION *for damage are conferred.*(*b*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. Parties.

(*p*) L. P. Act, 1925, s. 196, will apply in regard to the notices.

Subject to the requirements of r. 113 as to Form, the above Precedent will apply to registered land. Notice of the lease should be entered on the register under L. R. Act, 1925, s. 48, and r. 186. The lessee should be registered as proprietor of the lease under s. 8 of the same Act. The heading should be that used for ordinary transfers. Registered land.

(*a*) In L. R. Act ,1925, "land" includes the mines and minerals, whether or not held with the surface: s. 2 (x); but they are not included in the guarantee of title unless noted on the register as included in the title: s. 83 (5) (*b*). As to land registered before 1926, they are "overriding interests," as to which see s. 70 (1) (l). The compulsory provisions do not apply to mines and minerals apart from the surface: *ib.*, s. 120 (1). The L. R. R. 1925, rr. 111 and 112, 195 and 196, deal with the form and subsequent registration of transfers of surface without mines and minerals, and of mines and minerals without surface, and provide forms (Nos. 25 to 30) for the different varieties of these transactions. The forms only relate to the actual conveyance or reservation itself; the ancillary details as to powers of working, letting down surface, &c., have to be added from the Precedents which follow. There will be no difficulty in doing this. Registered land in regard to minerals.

As to the first registration of mines and minerals apart from the surface: L. R. R., 1925, rr. 50, 53, 55, 195 and 196.

(*b*) See note to Form No. 2, Sec. II, p. 471, and Dissertation, p. 208, *supra*.

(hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

Seisin of Vendor.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the lands hereinafter described (including the mines and minerals in and under the same), and has agreed to sell the said mines and minerals to the Purchaser [together with the rights over the surface hereinafter mentioned] at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance of mines and minerals.

1. IN pursuance of the said agreement, and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels of minerals.

ALL AND SINGULAR the mines, minerals, and mineral substances [*or, specifying them as* the mines, veins, seams and beds of coal, ironstone, iron ore and fireclay, *&c.*] in or under the lands situated in the Parish of ——, in the County of ——, and more particularly described in the First Schedule hereto and delineated on the plan hereto and thereon coloured pink:

[Variation A. Power for Purchaser to let down the surface, without power of entry thereon.]

[TOGETHER with full power (*c*) for the Purchaser and the persons deriving title under him, without leaving any subjacent or lateral support, to let down the surface of the said lands and any adjoining lands or minerals of the Vendor and any buildings erected or to be erected thereon in working such mines, minerals, and mineral substances, but doing as little damage as may be, and so that proper compensation shall be paid to the Vendor or other the owner for the time being of the surface or any adjoining minerals or land in respect of any damage to any buildings now or hereafter to be erected thereon or to the surface or any adjoining minerals by reason of the working of such mines, minerals, and mineral substances, the amount of such compensation in case of dispute to be settled by the arbitration of two arbitrators or their umpire, pursuant to the Arbitration Act, 1889:]

Working of Minerals.

(*c*) It is generally better to give the purchaser express power to let down the surface subject to his paying compensation for damage than to oblige him to leave supports which are often found unsatisfactory. It is safer to let the whole district sink. Boundary barriers are, however, frequently required. It is now recognised that some subsidence of the surface is inevitable if the minerals are worked. For powers to acquire rights to work, see Mines (Working Facilities) Act, 1923. Powers to work minerals are not affected by the rule against perpetuities: L. P. Act, 1925, s. 162 (1) (*d*).

[TOGETHER with full power (*continue as in Form No. 2, Sec. II, p. 472, supra, substituting* "the Purchaser" *for* "the Vendor")], [Variation B. Power to let down surface and to enter thereon and to sink shafts, &c.]

TO HOLD unto the Purchaser in fee simple.

2. THE said mines and minerals shall and may be worked, gotten, and carried away by means of outstroke or underground workings only through any mines or lands belonging to or held by the Purchaser or the persons deriving title under him and adjoining the mines and minerals hereby conveyed, or which he or they may for the time being be authorised to use for that purpose, but the surface of the lands mentioned in the First Schedule hereto, or any of them, shall not be entered upon or in any manner interfered with for any of the purposes aforesaid, or for any purpose connected with the mines and minerals hereby conveyed, and the Purchaser and the persons deriving title under him shall (except as aforesaid) do no damage or injury to the surface of the said lands in or about the working and getting of the said mines and minerals or in any wise relating thereto.(*d*) Underground workings only permitted.

3 and 4. THE Vendor hereby acknowledges (*Form No. 4, Sec. III, p. 480, supra, as to documents in Second Schedule*). [*Also Form No. 8, Sec. III, p. 483, supra, if required.*]

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of the lands above referred to.

THE SECOND SCHEDULE.

Particulars of documents retained in the custody of the Vendor.

No. II.

CONVEYANCE *of* FREEHOLDS *where the* MINES *and* MINERALS *and* POWERS *of* WORKING *are reserved.*(*e*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: Parties.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the lands hereinafter described, and Seisin of Vendor and

(*d*) This provision will not be required if Variation B is used.

The form here required will be No. 28, 29 or 30 in the L. R. R., 1925. Registered land.

(*e*) See L. P. Act, 1925, s. 65, as to the reservation of the powers. The deed should be executed in duplicate. A mortgagee can now sell with these reservations: *ib.*, s. 101. The powers of working reserved take effect in derogation of the rights of the surface owner.

agreement for sale subject to reservation of minerals.

has agreed to sell the same to the Purchaser, subject to the exceptions and reservations hereinafter contained, at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

All, &c. (*parcels*), Except and Reserved as hereinafter mentioned,

Habendum.

To hold (except as hereinafter mentioned) unto the Purchaser in fee simple Reserving to the Vendor and the persons deriving title under him the right to exercise the powers, rights and privileges hereinafter expressed to be reserved.

Exception and reservation of mines and minerals.

2. There shall be excepted and reserved unto the Vendor (*f*) in fee simple, out of the conveyance hereby made, all mines, veins, seams, and beds of coal, ironstone, and other minerals whatsoever already found, or which may hereafter be found under the lands hereby conveyed, with liberty to work the same either by instroke or outstroke, with or without leaving any subjacent or lateral support for the surface or any adjacent minerals, but subject to the provisions as to compensation hereinafter contained, and with full liberty of ingress, egress and regress at all times for the Vendor, his successors in title, and his or their servants, agents and workmen, into and upon the said lands, and either with or without horses and other cattle, carts, waggons, engines, and other vehicles for the purpose of searching for, working, getting, and carrying away the said mines and minerals, and with full liberty also for the Vendor and his successors in title, to sink, drive, make and use pits, shafts, drifts, adits, aircourses, and watercourses, and to erect and set up fire and other engines, machinery, and works, and to lay down railroads and other roads in, upon, under and over the said lands, or any of them, for the purpose of more conveniently working and carrying away the said mines and minerals, and also to appropriate and use any part of the surface of the said lands for depositing, placing, and heaping thereon the minerals, waste, rubbish, and other substances which may be gotten from

Liberty of ingress, &c.

Liberty to sink pits.

Liberty to appropriate surface for heap room.

(*f*) The new privileges take effect as annexed to the excepted minerals, L. P. Act, 1925, s. 187, without any re-grant: *ib.*, s. 65; overruling after 1925 *Wickham* v. *Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153; *May* v. *Belleville* [1905], 2 Ch. 605; 74 L. J. Ch. 678. The rights are not too remote: L. P. Act, 1925, s. 162 (1).

the said mines, and generally to do all other acts and things necessary or proper for working and getting the said mines and minerals according to the most approved practice of mining in the district.

Vendor to pay rent for surface appropriated.

3. THE Vendor and the persons deriving title under him shall pay to the Purchaser and the persons deriving title under him the annual sum of £——for every acre, and so in proportion for any less quantity than an acre of land, the surface whereof shall be appropriated or used for any of the purposes aforesaid, so long as such appropriation or use shall continue, and until the surface shall be restored, as nearly as may be practicable, to its original state and condition before such appropriation or use commenced.

Workings to be conducted so as not to endanger buildings, &c.

4. THE workings of the said mines shall be conducted, so far as practicable, in such a manner as not to endanger more than necessary any buildings now being on the said lands or which may be hereafter erected on the site of or within —— yards of the site of any present buildings, and generally so as to do as little damage or injury to the surface of the said lands as shall be consistent with the proper working of the said mines, and such compensation shall be paid in respect of any such damage or injury as hereinafter provided.

Vendor to pay compensation for damage.

5. THE Vendor and the persons deriving title under him shall pay to the Purchaser and the persons deriving title under him adequate compensation, for all damage or injury which he or they, or his or their tenants, may sustain by reason of the working of the said mines, or the exercise of any of the liberties or privileges hereby excepted and reserved (including any damage or injury occasioned to the surface of the said lands and to any buildings now or hereafter to be erected thereon as aforesaid), the amount of such compensation, and all other matters in difference which may arise between the parties in connexion with the said excepted mines, minerals, liberties and privileges, to be settled by a single arbitrator [*or* two arbitrators, one to be appointed by each party or their umpire] under the provisions of the Arbitration Act, 1889.

6 and 7. THE Vendor hereby acknowledges (*Form No.* 4, *Sec. III, p.* 480). [*Also No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.(*g*)

Separate dealings with surface and minerals by tenant for life.

(*g*) As to sales of mines and minerals with or without the surface, or of land with a reservation of minerals by a tenant for life, see S. L. Act, 1925, s. 50. The ordinary Prec. I, Group E, under S. L. Act, p. 567, *supra*, of a Conveyance

GROUP G.—CONVEYANCES ON SALES OF ADVOWSONS AND ECCLESIASTICAL PROPERTY.

No. I.

CONVEYANCE *of an* ADVOWSON.(*a*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

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of freeholds can be readily adapted, but it must be seen that the conveyance takes the form of a subsidiary vesting deed as respects the reserved rights of working.

Registered land.

The form here required will be No. 25, 26 or 27 in the L. R. R., 1925.

(*a*) The conveyance must be registered within one month in the registry of the diocese: Benefices Act, 1898, s. 1 (1) (*a*); see also note to Prec. XIII of Agreements for Sale, p. 422, *supra*. No conveyance on sale of an advowson made after two presentations have occurred after 14th July, 1924, will be valid: Benefices Act, 1898 (Amendment) Measure, 1923.

Purchaser of advowson may present himself.

The owner of an advowson (including before 1926 the purchaser of an estate for life in an advowson), being a clerk, may, on a vacancy, offer himself to the bishop, and the bishop cannot refuse him on that ground: *Walsh* v. *Bishop of Lincoln* (1875), L. R. 10 C. P. 518; 44 L. J. C. P. 244; see also *Lowe* v. *Bishop of Chester* (1883), 10 Q. B. D. 407.

Vacancy.

If the owner in fee of an advowson dies during a vacancy, the next presentation goes to his personal representatives: *Mirehouse* v. *Rennell* (1832), 8 Bing. 490.

Bankrupt.

Where the owner of an advowson is a bankrupt, the right of nomination may be exercised by him in respect of any vacancy occurring before the sale of the advowson, see Bankr. Act, 1914, s. 38 (*g*). A husband during coverture has the right of nomination in respect of an advowson vested in his wife, and not being her separate property under the M. W. P. Acts, or otherwise, and after her death before 1926, in case there were issue of the marriage, and the husband survived, he was entitled to present as tenant by the curtesy, see 3 Cru. Dig. 14; Tud. R. P. 214. Where the intestate died before 1926, if a widow was entitled to dower in respect of an advowson, the heir had the first two presentations and the widow the third.

Right of husband as tenant by curtesy or otherwise.

Former right of widow.

Joint tenants and tenants in common.

If before 1926 a right of presentation was vested in joint tenants or tenants in common they had to concur in the presentation, in order to make it binding on the ordinary. If they presented severally, the ordinary might admit either of the presentees or refuse all, and if no joint presentation was made within the six months he could present by lapse: Co. Lit. 186b.

Coparceners.

In the case of coparceners before 1926 the eldest might present on the first turn, and this right passed to her issue or to her assign: Co. Lit. 186a.

Tenants in common when they cannot agree.

Where an advowson was vested before 1926 in trustees in trust for tenants in common and the beneficiaries could not agree as to the nomination, the court directed them to draw lots: *Johnstone* v. *Baber* (1856), 6 De G. M. & G. 439; 25 L. J. Ch. 899. It is conceived that the same course would have been adopted in the case of joint tenants. In the case of coparceners, equity would have followed the law and allowed the eldest to nominate on the first turn.

After 1925 trust for sale.

After 1925 in all cases where there would have been joint tenants, tenants in common or co-parceners, the advowson will be vested in trustees on trust for sale; they should make the nomination in accordance with the directions of the

WHEREAS the Vendor is seised in fee simple of the advowson hereinafter described, and has agreed to sell the same free from incumbrances to the Purchaser at the price of £—— : Seisin of Vendor and agreement for sale.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser, Conveyance.

ALL THAT the advowson and perpetual right of presentation of and to the Rectory [Vicarage] or Parish Church of ——, in the County of ——, Parcels.

TO HOLD unto the Purchaser in fee simple. Habendum.

[*Add acknowledgment, &c., as to documents, if required, Form No.* 4, *Sec. III, p.* 480. *Also Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

No. II.

CONVEYANCE *by an* INCUMBENT *of* GLEBE LAND *under the* GLEBE LANDS ACT, 1888.(*b*) (*Legal Estate.*)

THIS CONVEYANCE is made, &c., BETWEEN The Revd. A. B., Parties.

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beneficiaries. If they do not agree their rights should, it is conceived, be settled between themselves on the same principles as under the old law, and when so settled the requisite directions should be given to the trustees.

An infant, and not his guardian, was entitled to present to a church: *Hearle* v. *Greenbank* (1749), 3 Atk., at p. 710. Infant.

If the right of nomination is vested in trustees, they cannot vote by proxy; and unless they have been incorporated by charter, they must all join in the presentation, if there is no power authorising a majority to bind the rest. Trustees.

Where an advowson is vested in the parishioners or inhabitants of a place or in trustees for them, the majority of the parishioners or inhabitants may appoint: *Fearon* v. *Webb* (1807), 14 Ves. 13. Parishioners, &c.

As to engagements to resign benefices in favour of other persons, see the Clergy Resignation Bonds Act, 1828, also Benefices Act, 1898. A Precedent of a bond of resignation is given in Vol. II, under "Bonds." Resignation of benefices.

Under the Benefices Act, 1898 (Amendment) Measure, 1923, patronage rights are incapable of sale after two vacancies from 14th July, 1924. No mortgage of an advowson made after 14th July, 1924, is valid. Benefices Act 1898 (Amendment) Measure, 1923.

If the title to an advowson is registered, the conveyance will be effected by an Instrument of Transfer without recitals in Form No. 19 in the Rules.

"Land" in L. R. Act, 1925, includes an advowson: s. 3 (x); but the compulsory provisions do not apply: *ib.*, s. 120 (1). Registered land.

(*b*) See notes to Form No. 19, Special Conditions, p. 249, *supra*, as to notices required and other matters. If no objection is made, the Minister of Agriculture and Fisheries requires a valuation by a competent surveyor. The Minister may then approve of the sale by an order made in the prescribed form, see 1909, W. N., Pt. II, 319. The money has to be paid into the Bank of England to the account of the Minister, and the application of the proceeds is directed by s. 4 of the Act. Glebe Lands Act, 1888.

A limitation to X. and his successors, vicars of a parish, was not a settlement within the S. L. Acts (*Ex parte Vicar of Castle Bytham* [1895], 1 Ch. 348; S. L. Act in relation to ecclesiastical property.

Vicar of the Vicarage and Parish Church of ——, in the Parish of ——, in the County of ——, Clerk in Holy Orders (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Seisin of Vendor.

(1) The Vendor, as the present incumbent of the said Church and Vicarage, is entitled to the fee simple (*c*) in possession free from incumbrances of the lands hereinafter described, forming part of the glebe land of the said Vicarage:

Conditional agreement for sale.

(2) The Vendor, as such incumbent as aforesaid, has agreed to sell to the Purchaser the lands hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——, but subject to the approval of the Minister of Agriculture and Fisheries (hereinafter called the Minister):

Approval by Minister of Agriculture, &c.

(3) By an instrument dated the —— day of —— under his official seal the Minister has approved (*d*) of the said sale (*Insert here such conditions (if any) as are prescribed by the order*):

Conveyance.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— paid

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64 L. J. Ch. 116); the Acts did not apply to ecclesiastical property at all: *S. C.*, and *Re Bishop of Bath and Wells* [1899], 2 Ch. 138; 68 L. J. Ch. 524. The court can, however, apply, under S. L. Act, 1925, s. 76, the proceeds of sale of such property sold under the Lands C. Act, 1845.

Ecclesiastical trusts.

Under s. 29 where land is vested in trustees, and it is conceived that an incumbent is a trustee, on or for ecclesiastical trusts or purposes the managing trustees have the powers of a tenant for life and of the trustees of a settlement. That section stands by itself, and the powers are made exercisable as if conferred by the instrument creating the trust and subject to the like consents or orders being obtained. The object of the section is to give such incidental powers as a tenant for life has in reference to sales and other transactions which the trustees might not have under their statutory or other powers. The provisions (s. 43) of the L. P. Act, 1922, relating to sales in consideration of rentcharges still apply to glebe land and remain to be dealt with by a Measure of the National Assembly of the Church of England.

Glebe land at a rent.

Estate of corporation sole.

(*c*) As to the legal position of an ecclesiastical corporation sole, see 1900, 16 L. Q. R. 335. See also as to the position of a corporation sole: L. P. Act, 1925, s. 180 (devolution, vesting and vacancy in the office), Ad. of E. Act, 1925, s. 3 (5) (devolution on the death of a corporation sole).

Searches and inquiries.

Inquiries or searches may be made of or at Queen Anne's Bounty, the Ecclesiastical Commissioners, the Land Improvement Company, and the Diocesan Registry for incumbrances or other dealings.

Exceptions from Glebe LandsAct, 1888.

(*d*) The Minister cannot approve the sale of any land occupied by the parsonage house, or the outbuildings, garden, or other appurtenances thereto, or such part of the glebe as he considers necessary for the convenient enjoyment of the house (s. 3 (1)); nor of (a) any land subject to a lease originally created for a term exceeding twenty-one years; (b) any land let for any term at a rent less than two-thirds of the rack-rent, or where for any other reason the incumbent is not in possession of the full rents and profits; (c) any mines and minerals where they are or are likely to become of considerable value: s. 5 (2).

by the Purchaser into the Bank of England to the account of the Minister (the receipt whereof is acknowledged by a memorandum in writing under the official seal of the Minister dated the —— day of ——, 19—), the Vendor, As Trustee,(*e*) and as such Vicar as aforesaid, and in exercise of the power for this purpose conferred on him by the Glebe Lands Act, 1888, and of all other powers hereby conveys unto the Purchaser,

Parcels.

ALL, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum.

TO HOLD unto the Purchaser in fee simple. [*Add Form No.* 8, *Sec. III, p.* 483, *if required.*]

IN WITNESS, &c.

No. III.

CONVEYANCE *by an* INCUMBENT *of* GLEBE LANDS *under the* ECCLESIASTICAL LEASING ACTS.(*f*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN The Revd. A. B., Rector of the Rectory and Parish Church of ——, in the Parish

Covenants for title by an incumbent.

(*e*) Having regard to the peculiar estate of the incumbent, who for many purposes is in the position of a trustee, it would seem that he should only give the implied covenant against incumbrances, or an express covenant as regards his own acts, thus :—

"And the Vendor hereby covenants with the Purchaser that the Vendor has not done or knowingly suffered or been party or privy to any act or thing whereby he is prevented from conveying the said lands in manner aforesaid."

Incumbent a trustee within S. L. Act, 1925, s. 29.

It seems difficult to resist the conclusion that an incumbent is a trustee of ecclesiastical land within S. L. Act, 1925, s. 29 ; this would give effect to the object of the section, namely, to enlarge the class of dealings capable of being effected as respects ecclesiastical land, but subject in each case to the requisite consent or order being obtained.

Registered land within Glebe Lands Acts.

If the land is registered, there will be a restriction on the register under L. R. Act, 1925, s. 99, requiring a certificate by the Minister of Agriculture and Fisheries, which must be complied with. The form of the conveyance will be a transfer (without recitals) in Form No. 19 in the Rules. The receipt of the Minister for the purchase-money is a sufficient certificate for the registrar to register the transfer : r. 233.

(*f*) See notes to Special Conditions, Form No. 20, p. 250, *supra*, as to the notice required, the necessary parties, &c. As regards the title of the patrons, in this case it is generally considered sufficient to search at the Diocesan Registry, but a purchaser might perhaps, apart from special condition, require a title to be shown to the advowson.

Searches and inquiries.

As to searches and inquiries, see note to last Prec. ; if the property could have been dealt with under the Glebe Lands Act, 1888, then inquiries should also be made at the Ministry of Agriculture and Fisheries.

Registered land within Ecclesiastical Leasing Acts.

If the land is registered, there will be a restriction on the register under L. R. Act, 1925, s. 99, requiring a certificate by the Ecclesiastical Commissioners in Form No. 74. This will be a sufficient authority for the registration of the transfer, which will have no recitals and will be in Form No. 19.

of ——, in the County of ——, Clerk in Holy Orders (hereinafter called the Vendor), of the 1st part, C. D., of, &c., E. F., of, &c., and G. H., of, &c. (the present patrons of the said Rectory, and hereinafter called the Patrons), of the 2nd part, the Ecclesiastical Commissioners for England (hereinafter called the Commissioners), of the 3rd part, and K. L., of, &c. (hereinafter called the Purchaser), of the 4th part: WHEREAS:—

Seisin. (1) (*Recite seisin of Vendor as in last Precedent, substituting* "Rectory" *for* "Vicarage," *if required*):

Approval of Commissioners. (2) It has been made to appear to the satisfaction of the Commissioners that the lands hereinafter described may to the permanent advantage of the estate and endowments belonging to the said Rectory be sold (*g*) in manner hereinafter appearing:

Agreement for sale. (3) The Vendor, as such Rector as aforesaid, has with the consent of the Patrons and the approval of the Commissioners agreed to sell to the Purchaser the lands hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Notice to bishop of diocese. (4) Due notice of the intended sale was given to the Right Revd. ——, Lord Bishop of ——, on the —— day of ——:

Payment into bank. (5) The Purchaser has on or before the execution of these presents paid the said sum of £—— into the Bank of England to the credit of the Commissioners:

NOW THIS DEED WITNESSETH as follows:—

Conveyance by incumbent. 1. IN pursuance of the said agreement and in consideration of the payment of the said sum of £—— into the said Bank to the credit aforesaid (the payment of which sum the Commissioners hereby acknowledge, and the receipt of which sum is intended to be acknowledged by a memorandum indorsed on these presents under the hand of their Treasurer (*h*)), the Vendor, As Trustee, (*i*) and as such incumbent as aforesaid, and with the consent of the Patrons (testified by their execution hereof) and with the approval

(*g*) As to these words, see Ecc. Leasing Act, 1858, s. 1. If the case comes within the Glebe Lands Act, 1888, see note to last Prec.; it is more convenient to proceed under that Act.

As to sales of the parsonage house, see the next Prec.

(*h*) The purchase-money must be paid to the Commissioners, and the receipt of their treasurer is a good discharge to the purchaser: Ecc. Leasing Act, 1858, s. 2.

(*i*) As to covenants for title, see notes to last Prec.

of the Commissioners (testified by their execution hereof) and in exercise of the power for this purpose conferred on him by the Ecclesiastical Leasing Acts,(*j*) and of all other powers hereby conveys unto the Purchaser,

ALL THAT, &c. (*see Forms in Sec. II, p.* 471, *et seq.*), Parcels.

TO HOLD unto the Purchaser in fee simple. Habendum.

[2 and 3. *Add, if required, acknowledgments for production by Vendor and Patrons of documents (if any) showing they are the present incumbent and patrons. Also Form No.* 8, *Sec. III, p.* 483, *if required.*] [Acknowledgment for production.]

IN WITNESS, &c.(*k*)

No. IV.

CONVEYANCE *of a* VICARAGE *under the* PARSONAGE ACTS, 1838.(*l*) (*Legal Estate.*)

THIS CONVEYANCE is made the —— day of ——, 19—, BETWEEN the Revd. ——, Incumbent of the Vicarage and Benefice of ——, in the County of ——, in the Diocese of ——, and in the Province of Canterbury [*or* York], Clerk in Holy Orders (hereinafter called the Incumbent), of the 1st part, ——, of, &c., the Patron of the said Benefice (hereinafter called the Patron), of the 2nd part, The Right Revd. Father in God ——, by Divine Permission Lord Bishop of ——, Ordinary of the said Benefice (hereinafter called the Ordinary), of the 3rd part, The Right Honourable and Most Revd. Father in God, ——, by Divine Providence Lord Archbishop of Canterbury, Primate of All England [*or* York], and Metropolitan, within whose Province the said Benefice is situated (hereinafter called the Metropolitan), of the 4th part, and ——, of, &c. (hereinafter called the Purchaser), of the 5th part: WHEREAS:— Parties.

(1) The Incumbent is seised in right of the said Benefice of —— to him and his successors of the vicarage house and other lands hereinafter described: Recital of seisin of Incumbent.

(*j*) This is the short title of the Acts of 1842 and 1858, see s. 13 of the latter Act. The Act of 1865 deals only with money arising from rentcharges.

(*k*) Under s. 7 of the Act of 1842 the execution by the necessary parties is conclusive evidence that the Acts have been complied with.

(*l*) There are two statutes of the same year. As to registered land, see note to the preceding Precedents substituting Queen Anne's Bounty for the Ecclesiastical Commissioners.

Agreement for sale.

(2) Pursuant to the Parsonage Act, 1838, and Parsonage Amendment Act, 1838, the Incumbent, with the consent of the Patron and of the Ordinary and of the Metropolitan, has agreed in his corporate capacity to sell to the Purchaser in fee simple in possession the vicarage house and other lands hereinafter described free from incumbrances at the price of £——, which price appears to the parties hereto of the 2nd, 3rd and 4th parts to be fair and reasonable:

NOW THIS DEED WITNESSETH as follows:—

Conveyance under Parsonage Acts.

1. In pursuance of the said agreement and in consideration of the sum of £—— on or before the execution of these presents paid by the Purchaser with the privity of the parties hereto of the first four parts to the Governors of the Bounty of Queen Anne (*m*) (the receipt of which sum of £—— is acknowledged by the receipt of the Treasurer of the said Governors indorsed hereon), the Incumbent, in exercise of the powers conferred on him by the Parsonage Acts, 1838, and of every other power enabling him, and with the consent and approbation of the Patron, the Ordinary, and Metropolitan respectively (testified by their execution hereof), hereby, As Trustee, conveys unto the Purchaser,

Parcels.

All that the vicarage house of ——, situated, &c., with the outbuildings, garden and grounds used therewith, and containing in the whole —a. —r. —p. or thereabouts, all of which lands belong to the said Benefice and are delineated on the plan hereto and thereon coloured ——,

Habendum.

To hold unto the Purchaser in fee simple [subject to the vicarial tithe rentcharge of £—— per annum charged thereon].

[2. *Add Form No.* 8, *p.* 483, *if required.*]

In witness, &c.

MEMORANDUM.

Receipt to be indorsed.

As Treasurer for the time being of the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, I acknowledge to have received from the within-named —— (*Purchaser*) the sum of £——, being the consideration money in the within-written Conveyance expressed to be paid by him.

Dated ——

(*m*) See Parsonage Acts, 1838, s. 8; 1911, s. 2.

GROUP H.—CONVEYANCES ON SALES OF LIFE INTERESTS, REMAINDERS, REVERSIONS, AND LIFE POLICIES.(a)

No. I.

CONVEYANCE *of life interests in* FREEHOLDS, ENFRANCHISED LAND, LEASEHOLDS, *and* CAPITAL MONEY *with a* POLICY. (*Equitable Interests.*)

THIS CONVEYANCE is made, &c. BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, the —— Assurance Company Ltd., whose registered office is at ——, &c. (hereinafter called the Purchasers), of the 2nd part, and ——, the Actuary of the Purchasers (hereinafter called the Trustee), of the 3rd part: WHEREAS: — Parties.

(1) Under the Will, (b) dated, &c., of X. Y., who died on the, &c., and proved on the, &c., by R. and S., the executors therein named, and by virtue of a Vesting Deed dated, &c. [*or* a Vesting Assent in writing, dated, &c., under the hands of the said R. and S.] and by virtue of divers subsidiary Vesting Instruments upon the trusts of the said Will and as respects the enfranchised land hereinafter mentioned by virtue of the Law of Property Act, 1922, and a Compensation Agreement, dated, &c., the freehold lands hereinafter described (with certain advowsons (c)) and the enfranchised and leasehold lands hereinafter described are now vested in the Vendor in fee simple or for the residues of the terms created by the respective Leases hereinafter mentioned Upon trust for himself during his life Will, &c., under which Vendor is tenant for life.

(a) All the Precedents in this Group apply (with slight verbal alterations) to registered land as they deal with "minor interests": L. R. Act, 1925, s. 2. They cannot be registered, but their priorities must be protected *inter se* by entry in the Minor Interests Index of priority cautions or inhibitions under s. 102 of that Act. Registered land.

(b) If the life interest is taken under a realty settlement this recital can be readily adapted and "the recited settlement" can be referred to in place of the Will, and a Vesting Deed in place of an Assent if the property has not devolved after 1925 on the death of a tenant for life. There would be a Vesting Deed made shortly after 1925, whether the settlement was made by deed or Will unless the land was vested in personal representatives when the L. P. Act, 1925, came into force.

(c) If advowsons are included in the conveyance, then it must be registered under the Benefices Act, 1898, to pass the whole of the vendor's interest, and must otherwise comply with that Act, as amended by the Benefices Act, 1898, (Amendment) Measure, 1923. Under that Measure a sale will not be valid after two presentations have been made after 14th July, 1924; no mortgage of an advowson can be made after that date.

without impeachment for waste, with divers remainders over,(*d*) And the said R. and S. are the present trustees of the Settlement created by the recited Will and the Vesting Instrument aforesaid for the purposes of the Settled Land Act, 1925 :

Of sales under S. L. Act.

(2) Divers sales and other dispositions have been effected under the Settled Land Act, 1925, or the enactments replaced thereby, of other lands formerly subject to the limitations of the recited Will, and the net capital money arising from such sales and dispositions [with the residuary personal estate of the said testator] is now represented by the investments and cash mentioned in the Fourth Schedule hereto and standing in the names of the said R. and S. as such trustees aforesaid :

Title to policy.

(3) The Vendor is entitled to the policy on his own life effected with the Purchasers hereinafter mentioned and assigned :

Agreement for sale.

(4) The Vendor (*e*) has agreed to sell his life interest in possession in the lands [capital money and investments] for the time being subject to the trusts of the said Will (other than advowsons) together with the said policy to the Purchasers free from incumbrances at the price of £—— :

Conveyance of life interest in freeholds, enfranchised leaseholds, and capital money.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchasers,(*f*)

(*d*) If the Will gives personal estate to be held as capital money add here :—

Variation if personal estate given to devolve with the land.

"And the said testator bequeathed the residue of his personal estate, after payment thereout of his funeral and testamentary expenses, debts and legacies (all of which have been discharged), to the said R. and S., to be held Upon trust as if the same were capital money arising under the Settled Land Acts, 1882 to 1890, and so as to be primarily liable to be laid out in the purchase of freehold land to be conveyed to the uses thereby declared concerning the freehold lands thereby settled [*or if the testator died after* 1925 " Upon trust as if the same were capital money arising under the Settled Land Act, 1925, from the land thereby devised in settlement and so as to devolve therewith"].

(*e*) The purchasers should obtain the certificate of birth of the vendor and make the usual inquiry of the trustees as to notices of incumbrances and dealings (L. P. Act, 1925, s. 137); they must also ascertain that no trust corporation has been appointed to register notices under *ib.*, s. 138. If the title to any of the land has been registered under L. R. Act, 1925, the Minor Interests Index at the Land Registry must be searched for notices.

(*f*) Notice in writing must be given to the S. L. Act trustees and to any trust corporation acting as registrars of notices in respect of the life interests conveyed :

FIRST, ALL THOSE manors, &c. (*see Form No.* 9, *Sec. II*, *p.* 475) ; Manors, &c.

SECONDLY, ALL THAT mansion house (*see Form No.* 9, *p.* 475) ; Mansion house.

THIRDLY, ALL THOSE perpetual yearly rentcharges, tithe rentcharges, and other incorporeal real estate (except advowsons or rights of presentation) now subject to the limitations of the recited Will ; Rentcharges.

FOURTHLY, ALL THOSE freehold or enfranchised messuages, farms, &c. (*continue Form No.* 9 (*fifthly*), *Sec. II*, *p.* 475, *referring to First Schedule*), and all other (if any) the freehold and enfranchised lands now subject to the limitations of the said Will ; Freeholds and enfranchised lands in First Schedule.

FIFTHLY, ALL the premises respectively comprised in and demised by the respective Leases mentioned in the Second Schedule hereto ; Leases in Second Schedule.

AND SIXTHLY, ALL AND SINGULAR the investments and capital money mentioned in the Third Schedule hereto and all other (if any) the personal estate now by any means liable to be laid out in the purchase of land to be made subject to the limitations by the said Will declared concerning the freehold property thereby settled ; Capital money and investments in Third Schedule

TO HOLD unto the Purchasers for the residue of the life of the Vendor without impeachment of waste. Habendum.

2. PROVIDED ALWAYS (*g*) that in accordance with the Settled Land Act, 1925, section one hundred and four, sub-section (4), no investment or application of capital money affected by this conveyance shall be made (except an investment in securities authorised by statute) without the consent of the Purchasers or the persons deriving title under them, and notice of any intended transaction affecting the settled land shall be given to the Purchasers or the persons deriving title under them.(*h*) Provision as to notice of the exercise of the S. L. Act powers, &c.

3.—(1) FOR the consideration aforesaid, the Vendor, As Beneficial Owner, by the direction of the Purchasers, hereby assigns unto the Trustee, Assignment of policy.

L. P. Act, 1925, s. 137. If the title to any of the land has been registered application must also be made to the Land Registrar for a priority inhibition to be entered in the Minor Interests Index.

(*g*) As to this proviso, see S. L. Act, 1925, s. 104 (4) ; the purchaser will in this case take immediate possession, hence sub-s. 3 (*a*) will not apply.

(*h*) In the case of registered land the purchaser of the life interest does not have any right to enter a caution or restriction on the register by reason of this provision, as a purchaser of the fee simple is not concerned to enquire about it : S. L. Act, 1925, s. 104 (4) (*c*). But he should enter a priority inhibition under L. R. Act, 1925, s. 102 and the rules thereunder. Registered land.

ALL THAT policy effected on the life of the Vendor with the Purchasers for assuring payment on his death of the sum of £——, dated ——, Nod. ——, at the annual premium of £——, TOGETHER with the full benefit of the said policy,

TO HAVE AND RECEIVE the same unto the Trustee absolutely,

IN TRUST for the Purchasers, or as they may direct, to the intent that the same shall not merge.

(2) THE Purchasers shall have power to remove any trustee from the trust aforesaid, and the statutory power to appoint new trustees shall be vested in the Purchasers or the persons deriving title under them.

IN WITNESS, &c.(*i*) (*Add the three Schedules.*)

No. II.

ASSIGNMENT *of Life Interest in* PERSONALTY *and in* LAND *held on trust for sale.* (*Equitable Interests.*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Conveyance on trust for sale.

(1) By (*j*) a Deed (hereinafter called the Conveyance), dated, &c., and made between the Vendor of the 1st part, M. C., spinster (afterwards and hereinafter called M. B.), of the 2nd part, and X. and Y. (hereinafter called the Trustees), of the 3rd part (*continue Form No.* 15, *Sec. I, p.* 460, *substituting* "the Trustees" *for* "the Vendors," *and ending*) Upon the trusts declared concerning the same by a settlement bearing even date therewith, meaning the Settlement next hereinafter recited:

Settlement of personalty including net proceeds of sale.

(2) By a Deed (hereinafter called the Settlement) bearing even date with and made between the same persons as the parties to the Conveyance and in the same order (being a Settlement made

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Tenant for life refusing to exercise powers.

(*i*) If a tenant for life who has parted with his beneficial interest or has ceased to have a substantial interest refuses to exercise his statutory powers the court may vest those powers in the S. L. Act trustees and direct the documents of title to be delivered to them; they will exercise the powers in his name (S. L. Act, 1925, s. 24 (1)); the order must be registered under L. C. Act, 1925 (*ib.*, sub-s. (2)); an assign of the life interest has a right to production of the documents of title as if the tenant for life had given an acknowledgment and undertaking: S. L. Act, 1925, s. 111 (*b*). The purchaser of a life interest after 1925 will have the like remedies against lessees, &c., as if a legal life estate had been conveyed, for the legal estate in the settled land will vest in the tenant for life (*ib.*, s. 111 (*b*)); though being a trustee the tenant for life cannot actually part with his legal estate in the fee simple: *ib.*, ss. 13. & 18.

Right to production of documents.

Remedies of purchaser of life interest.

(*j*) If the life interest is acquired under a Will, see Sec. I, Form No. 16, p. 460, *supra*, which recital can be adapted, the beneficial trusts being mentioned to show the life interest.

in consideration of the said marriage) the Trustees were directed to stand possessed of certain investments which had been transferred to them by the Vendor and of the net proceeds of sale arising under the Conveyance and of the investments for the time being respectively representing the same (hereinafter called the Husband's Trust Fund) and of the income thereof Upon trust after the said marriage to pay the said income to the Vendor during his life, and after his death Upon certain trusts for the benefit of M. B. and the issue of the then intended marriage: And the Settlement contained a power for the Trustees, with the consent of the Vendor and M. B. during their joint lives and of the survivor of them during his or her life, to raise any part or parts not exceeding together one-half of the presumptive or vested share of any child or other issue of the said marriage under the trusts thereof and to pay or apply the same for his or her advancement or benefit as therein mentioned: And it was thereby provided that the Trustees should stand possessed of the net rents and profits of the lands comprised in the Conveyance for the time being remaining unsold (after payment of the outgoings therein mentioned) Upon and subject to the same trusts and powers as were thereby declared concerning the annual income of the Husband's Trust Fund:(*k*)

(3) No advances have ever been made for the benefit of the issue of the said marriage under the power of advancement aforesaid [*or* under the statutory power of advancement]:(*l*) — As to power of advancement.

(4) No sales of any of the lands comprised in the Conveyance have ever been made and the Husband's Trust Fund now consists of the proceeds of sale to arise from the said lands and of the investments and money mentioned in the Schedule hereto and standing in the names of the Trustees as the present trustees of the Settlement: — As to the condition of the Husband's Fund.

(5) The Vendor has agreed to sell his life interest in the Husband's Trust Fund to the Purchaser free from incumbrances at the price of £——: — Agreement for sale.

(*k*) If new trustees have been appointed recite the power of appointment and the separate deeds appointing trustees of the conveyance and the settlement. If there have been several deeds and changes among trustees a schedule can be used (see Sec. I, Form No. 12, p. 458), and the effect of the schedule can be recited. — List of appointments

(*l*) In settlements made after 1925 the statutory power of advancement (T. Act, 1925, s. 32) will be relied on, and the recital will merely state that it has not been exercised. — Statutory power of advancement.

NOW THIS DEED WITNESSETH as follows :—

Assignment of life interest in investments and proceeds of sale of land.

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns and releases unto the Purchaser,

All that the life interest of the Vendor in

Parcels.

First, All those, &c. (*set out the parcels from the Conveyance*), or in the net proceeds of sale thereof or in the investments for the time being representing the same ;

And Secondly, All and singular the investments and money mentioned in the Schedule hereto and in all other (if any) the investments and property for the time being representing the Husband's Trust Fund,

Habendum.

To have and receive the premises unto the Purchaser,(*m*) discharged during the lifetime of the Vendor from any liability to reduction by reason of any exercise of the aforesaid power of advancement.

Covenant as to power of advancement.

2. The Vendor hereby covenants with the Purchaser that the Vendor (*n*) will not during his lifetime, as regards the Husband's Trust Fund, consent to the exercise of the power of advancement aforesaid.

As to changes of investment

3. Provided always that nothing herein contained shall prejudice or affect the right of the Vendor to consent to or request a sale or other authorised disposition of any of the lands comprised in the Conveyance, or a variation of any investments representing the Husband's Trust Fund, or an investment of any money forming part of that fund, nor render necessary the concurrence of the Purchaser or the persons deriving title under him in effecting any such sale, disposition, variation or investment.(*o*)

In witness, &c.

(*Add a Schedule of investments, &c.*)

Notices and inquiries.

(*m*) Notice in writing of the assignment must be given to the trustees, of whom inquiries should be made of the state of the property and as to notices of any dealings with the life interest (L. P. Act, 1925, s. 137) ; and notice of the assignment should be endorsed on the settlement : *ib.* It should be seen that no trust corporation has been appointed to act as registrar of notices under s. 138. If the title to the land has been registered the Index of Minor Interests should be searched. A priority inhibition should be placed in that Index. An interest in the proceeds of sale of land is treated as an equitable interest for the purposes of the L. P. Act, 1925 : see s. 205 (1) (x).

(*n*) See L. P. Act, 1925, s. 155.

Rights of purchasers from trustees for sale.

(*o*) The deeds in this case would be in the custody of the trustees ; as to the purchaser's right to production, see Dart, 7th ed., 485.

A purchaser of a legal estate from trustees for sale (being not less than two or a trust corporation) is not concerned with the trusts affecting the proceeds

No. III.

CONVEYANCE *of a* REMAINDER *in* FEE SIMPLE *expectant on a* LIFE INTEREST.(*p*) (*Equitable Interest.*)

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) X. Y., being at his death seised in fee simple in possession free from incumbrances of the property hereinafter described, duly made his Will dated the —— day of ——, and thereby, after appointing M. and N. (hereinafter called the Trustees) to be his executors and trustees for the purposes of the Settled Land Acts, 1882 to 1890, devised all his real estate (including the property hereinafter described) To the Use of E. B. during his life, with remainder To the Use of the Vendor (the eldest son of the said E. B.) in fee simple: By the said Will power was given to the said E. B. [to appoint by deed or will a jointure rentcharge not exceeding the yearly sum of £—— to any wife who might survive him during the residue of her life, and also, by the like means, to charge portions for his younger children and the issue of a younger child, not exceeding the aggregate sum of £——, with interest thereon from the death of the said E. B. at a rate not exceeding £—— per cent. per annum, and to appoint a term to trustees on the usual trusts for raising the same: And also] at any time during his life to appoint new trustees thereof: Will.

(2) The said testator died on the —— day of —— 1925, without having revoked or altered his said Will, which was on the —— day of —— duly proved at the —— Probate Registry by the Trustees:(*q*) Death of testator and probate.

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of sale or the rents and profits until sale (L. P. Act, 1925, s. 28); the purchaser is only concerned to see that the consents of not more than two persons made requisite by the trust for sale have been obtained: *ib.*, s. 26. Though the trustees are to give effect to the wishes of the persons entitled to the rent and profits until sale (this would include an assignee of a life interest) a purchaser is not concerned to see that effect is given thereto: *ib.*, s. 26 (3). Trustees, their duties as to beneficiaries.

(*p*) Under L. P. Act, 1925, s. 174 (replacing Sales of Reversions Act, 1867, which took effect on 1st January, 1868), a sale in good faith is not liable to be opened or set aside merely on the ground of undervalue. The jurisdiction of the court over unconscionable bargains is not affected (*ib.*, sub-s. 2); *Fry* v. *Lane* (1889), 40 Ch. D. 312; 58 L. J. Ch. 113, and cases therein cited; Dart, 7th ed., 748; *Brenchley* v. *Higgins* [1900], 83 L. T. 751; 70 L. J. Ch. 788. In this Prec. it is assumed that there are no leaseholds, or capital money. Sales of reversions.

(*q*) Though the testator died before 1926, still Ad. of E. Act, 1925, s. 36, applies, and a vesting assent in writing must be made in accordance with Vesting assent.

Vesting of legal estate.

(3) By virtue of Part II of the First Schedule to the Law of Property Act, 1925, the legal estate in the said property became vested in the said E. B. in fee simple upon the trusts of the said Will:

Vesting assent.

(4) By a Vesting Assent, dated, &c., and made by the Trustees as such personal representatives as aforesaid, they, pursuant to the said Act, declared, First, that the said property was vested in the said E. B. in fee simple Upon the trusts of the said Will; Secondly, that the Trustees were the trustees of the settlement created by the said Will for the purposes of the Settled Land Act, 1925; And thirdly, that the said E. B. had power during his life to appoint new trustees of the settlement:

State of family.

[(5) The said E. B. (who was born on the —— day of ——) is now a widower, his wife, the late R. B., having died on the —— day of ——, and all his children (other than the Vendor) have died in infancy without ever having been married, and no charge for portions has ever been made under the recited power:]

Agreement for sale subject to the life interest and to death duties.

(6) The Vendor has agreed to sell to the Purchaser free from incumbrances the property hereinafter described (subject to the life interest therein of the said E. B. and to the duties (if any) payable on his death in respect of the same property [and also subject to the powers to appoint jointures and charge portions conferred by the said Will] (*r*)) at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance of equitable interest in remainder.

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

Parcels.

ALL THOSE, &c. (*see Forms, Sec. II, p.* 471, *et seq.*),

Habendum.

TO HOLD unto the Purchaser in fee simple, subject to the life interest therein of the said E. B. and to the duties (if any) payable on his death in respect of the same property (*s*) and

S. L. Act, 1925, 2nd Sch., paras. 1 and 2, for under L. T. Act, 1897, Pt. I, the land devolved upon the executors. If the vendor originally took an estate tail, then the disentailing assurance must be recited.

(*r*) See note as to duties, Prec. X, Agreements for Sale, p. 418, *supra*. If the duties are to be commuted or the purchaser is to be indemnified against them, see clause 3 of the same Prec.

Notices.

(*s*) In this case the deeds will be in the custody of the tenant for life: S. L. Act, 1925, s. 98 (3). Notice of this conveyance must be given to the S. L. Act trustees (L. P. Act, 1925, s. 137); it may also be expedient to give notice to E. B., the estate owner, though that is not essential. In any case the conveyance does not affect the statutory powers of the tenant for life; on

charged with the expenses of obtaining the conveyance hereinafter mentioned [and also subject to the powers to jointure and charge portions conferred by the said Will].

2. If and when the Settlement created by the said Will determines by reason of the death of the said E. B. [and the failure, cesser or discharge of any jointure rentcharge and portions which may be created by him] legal effect shall be given to the foregoing conveyance by the special personal representatives of the said E. B. [or other the estate owner in whom the premises may be vested] by conveying the said property or the investments for the time being representing the same to the Purchaser or the persons deriving title under him freed from the trusts of that settlement.

Legal effect to be given to conveyance.

[3. For the consideration aforesaid the Vendor hereby consents to an order being made under section twenty-four of the Settled Land Act, 1925 (when the interest in remainder falls into possession, subject to any subsisting family charges), and irrevocably appoints the Purchaser and the persons deriving title under him as his attorney or attorneys to give or make any consent or applications under that section.]

Consent to order of court.

In witness, &c.

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his death, whether testate or intestate, representation will be granted to the then S. L. Act trustees limited to the settled land as his special executors or administrators, who will see to the payment of the duties and the raising of the portions, if any raisable. The conveyance by the remainderman, does not (S. L. Act, 1925, s. 104) prevent his becoming a person having the powers of a tenant for life if he, but for the conveyance, would have become an absolute owner subject to family charges (*ib.*, ss. 1 (1) (v), 20 (1) (ix)); but having parted with his interest he will not object to an order being made vesting the statutory powers in the S. L. Act trustees under s. 24. If any family charges are on foot when the tenant for life dies, the settlement continues (*ib.*, s. 3); the special personal representatives, unless an order is made under s. 24, would, after the duties have been provided for, execute a vesting assent in favour of the vendor, who cannot part with his statutory powers and nominate themselves as S. L. Act trustees. Till a vesting assent is made they have the powers of a tenant for life.

It is useless to register a land charge against E. B., the tenant for life, for his overreaching powers are saved by L. C. Act, 1925, s. 22 (1); if the vendor becomes entitled to exercise the statutory powers of a tenant for life, the same remark applies to him; but if he (but for the conveyance) would have become entitled free from family charges then a land charge to protect a mortgage would be effective against him.

Registration of land charge.

If the tenant for life has a right if he re-marries, to create family charges, a single premium policy should be effected against the event of his re-marriage, &c.

Insurance.

As to registered land, see note (*a*) p. 803.

Registered land.

No. IV.

RELEASE *of an* EXECUTORY DEVISE *to the* OWNER *of the* FIRST ESTATE. (*Equitable Interest.*)

Parties.

THIS RELEASE is made, &c., BETWEEN E. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Will devising lands in fee, with executory devise over.

(1) G. H. duly made his Will, dated, &c., and thereby after appointing M. and N. (hereinafter called the Trustees) to be his executors and trustees for the purposes of the Settled Land Acts, 1882 to 1890, devised all his freehold property, situated, &c. To the Use of the Purchaser in fee simple But in case the Purchaser should die without leaving issue living at his death (*t*) then the said testator devised the said property To the Use of the Vendor in fee simple And the said Will contained a power for the Purchaser to appoint new trustees thereof:

Death and probate.

(2) (*Recite as in* (2) *of last Precedent.*)

Vesting of legal estate.

(3) By virtue of Part II of the First Schedule to the Law of Property Act, 1925, the legal estate in the said property became vested in the Purchaser in fee simple absolute upon the trusts of the said Will:

Vesting assent.

(4) By a Vesting Assent, dated, &c., and made by the Trustees as such personal representatives and trustees as aforesaid, they pursuant to the said Act declared First that the said property was vested in the Purchaser in fee simple Upon the trusts of the said Will Secondly that the Trustees were the trustees of the Settlement created by the said Will for the purposes of the Settled Land Act, 1925 And thirdly that the Purchaser had power during his life to appoint new trustees of the Settlement:

Agreement for sale.

(5) The Vendor has agreed to sell all his interest in the said property to the Purchaser at the price of £——:

Restriction on executory limitations affects all property not entailed.

(*t*) By the L. P. Act, 1925, s. 134, it is provided, with respect to instruments coming into operation after 1882, that where there is a person entitled (see *Re Shrubb* [1910], W. N. 143) to land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation over was to take effect. As regards executory limitations in an instrument coming into operation after 1925, it applies to property generally, but it does not extend to entailed interests.

The first devisee in the case in the text has the statutory powers of a tenant for life: S. L. Act, 1925, s. 20 (i) (ii).

Registered land.

As to registered land, see note at head of this Group.

NOW THIS DEED WITNESSETH as follows:— Release.

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby releases and confirms unto the Purchaser

All the lands and property so devised by the recited Will to the uses aforesaid and remaining undisposed of And all other (if any) the property money and investments which by reason of any sale, purchase, exchange or other transaction, now represents the property so devised as aforesaid, Parcels.

To hold unto the Purchaser in fee simple, discharged from the aforesaid executory devise or limitation over to the Vendor, and from all other claims and demands whatsoever of the Vendor in respect thereof. Habendum.

[2. *Add Form No.* 8, *p.* 483, *if required.*] Certificate.

In witness, &c.

No. V.

CONVEYANCE *of the* Benefit *of an* Executory Devise *to a* Purchaser.(*u*) (*Equitable Interest.*)

THIS CONVEYANCE is made, &c., Between A. B., of, &c. (hereinafter called the Vendor), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: Whereas:— Parties.

(1) G. H., of, &c., duly made his Will, dated, &c., and thereby, after appointing M. and N. (hereinafter called the Trustees) to be his executors and trustees for the purposes of the Settled Land Acts, 1882 to 1890, devised the property hereinafter described To the Use of E. B. in fee simple But in case the said E. B. should die without leaving issue living at his death then To the Use of the Vendor in fee simple And the said Will contained a power for the said E. B. to appoint new trustees thereof: Will.

(*u*) Under L. P. Act, 1925, s. 4 (2) (reproducing with amendments, R. P. Act, 1845, s. 6), all contingent, executory, and future interests in land, including rights of entry, are capable of being disposed of by deed or Will. Contingent interest.

The R. P. Act, 1845, s. 8 (preventing contingent remainders from being defeated by forfeiture, merger or surrender of the preceding particular estate of freehold) and the Cont. Remrs. Act, 1877 (providing that a contingent remainder should, if the particular estate determined before it vested, be capable of taking effect as if it had been created as a springing or shifting use or executory limitation) have been repealed (L. P. (Amend.) Act, 1924, 10th Sch.), for, after 1925, no remainders can take effect or be limited save by way of trust, the legal estate will be vested in the tenants for life, statutory owners or personal representatives (as the case may be), on the requisite trusts (L. P. Act, 1925, ss. 1, 3, 7, 1st Sch., Pts. I, II, III, VII, VIII); the Statute of Uses has been repealed: *ib.*, 7th Sch. Legal contingent remainders abolished.

Death and probate. (2) The said testator died on the —— day of —— 19—, and his said Will was on the —— day of —— duly proved at the —— Probate Registry by the Trustees:

Vesting of legal estate. (3) By virtue of Part II of the First Schedule to the Law of Property Act, 1925, the legal estate in the said property became vested in the said E. B. in fee simple absolute upon the trusts of the said Will:

Vesting assent. (4) By a Vesting Assent, dated, &c., and made by the Trustees as such personal representatives and Settled Land Act trustees as aforesaid, they, pursuant to the said Act, declared, First, that the said property was vested in the said E. B. in fee simple Upon the trusts of the said Will Secondly, that the Trustees were the trustees of the Settlement created by the said Will for the purposes of the Settled Land Act, 1925 And thirdly, that the said E. B. had power during his life to appoint new trustees of that settlement:

Issue if any. (5) The said E. B. has not at present any issue [*or* has one child only, namely ——, who was born on the —— day of——]:

Agreement for sale. (6) The Vendor has agreed to sell all his interest under the said Will in the property hereinafter described to the Purchaser at the price of £——:

NOW THIS DEED WITNESSETH as follows:—

Conveyance. 1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

All the right and interest of the Vendor under the said Will or by virtue of any subsidiary vesting deed or other disposition on the trusts of the said Will in

Parcels. All, &c. (*see Forms in Sec. II, p.* 471, *et seq.*),

Habendum. And all other (if any) the property which may from time to time represent the property so devised as aforesaid,

To hold unto the Purchaser in fee simple or absolutely.

Certificate. [2. *Add Form No.* 8, *p.* 483, *if required.*]

In witness, &c.(*v*)

Notices. (*v*) Notice in writing of this conveyance must be given to the S. L. Act trustees (L. P. Act, 1925, s. 137); it should be seen that no trust corporation has been appointed as registrar of notices under *ib.*, s. 138. If the title to any of the land has been registered, application must be made to the Land Registrar to enter a priority inhibition in the Minor Interests Index. If arrangements can be made to indorse a memorandum of the notice on the probate of the Will that is expedient.

As to registered land, see note at head of this Group.

No. VI.

ASSIGNMENT *of a* REVERSIONARY SHARE *in the* PROCEEDS *of* SALE *of* LAND *held on trust for sale, and in* RESIDUARY PERSONAL ESTATE *under a* WILL.(*w*) (*Equitable Interests.*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) X. Y. duly made his Will dated the —— day of ——, and thereby, after appointing M. and N. (hereinafter called the Trustees) to be his executors and trustees, devised and bequeathed all his real estate and the residue of his personal estate to the trustees Upon trusts for sale and conversion (with power to postpone sale at the discretion of his trustees) And directed the trustees (after payment of his funeral and testamentary expenses and debts and the legacies thereby bequeathed) to invest the residue of the money to arise from such sales and his ready money in manner therein mentioned (with power to vary investments), and to stand possessed of such investments or the varied investments for the time being representing the same (hereinafter called the Trust Fund) Upon trust to pay the annual income thereof to Jane Y. (the testator's widow, who was born on the —— day of ——) during her life, and after her death, and in the event (which happened) of the testator dying without leaving any issue him surviving, as to both the capital and income of the Trust Fund In trust for the Vendor and E. F. in equal shares as tenants in common: Will.

(2) The said testator died on the —— day of —— without having revoked or altered his said Will, which was on the —— day of —— duly proved at the —— Probate Registry by the Trustees: Death of testator and probate.

(3) The Trustees as executors of the said Will have out of the said testator's personal estate paid his funeral and testamentary expenses and debts and the legacies bequeathed by the said Will and the estate duty payable in respect of the estate, and the residue of the said testator's estate is now represented by the State of residuary estate.

(*w*) Notice of this assignment must be given to the trustees of the Will (L. P. Act, 1925, s. 137), and *distringas* notices put on the stock. It should be seen that no trust corporation has been appointed as registrar for the purposes of s. 138. If the title to the land has been registered an application must be made to make the proper entry in the Minor Interests Index.

An interest in the proceeds of land held on trust for sale is an "equitable interest" in the land: L. P. Act, 1925, s. 205 (9) (ii). Equitable interests.

investments mentioned in the First Schedule hereto and the real estate mentioned in the Second Schedule hereto:

Agreement for sale.

(4) The Vendor has agreed to sell his moiety or other interest to which he is entitled in reversion under the said Will to the Purchaser subject to the death duties hereinafter mentioned, but otherwise free from incumbrances, at the price of £——:

Assignment.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser,

Parcels.

ALL (*x*) THAT the moiety or other share or interest to which the Vendor is now under the recited Will of the said X. Y. entitled expectant upon the death of the said Jane Y. as aforesaid in the Trust Fund

AND in all other (if any) the investments, real estate, money and securities now or hereafter to be held upon the trusts declared by the recited Will concerning the residuary estate thereby devised and bequeathed,

Habendum.

TO HAVE AND RECEIVE the same unto the Purchaser absolutely, subject to the legacy and other duties (if any) which may become payable thereon upon the death of the said Jane Y.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of investments.

THE SECOND SCHEDULE.

Particulars of real estate remaining unsold.

No. VII.

ASSIGNMENT *by a* MARRIED WOMAN, *married before* 1883,(*y*) *of her* REVERSIONARY INTEREST *in* PERSONALTY *under a* WILL *made after* 1857.(*z*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c., and C. B., his wife (hereinafter called the Vendors), of the one

---

(*x*) See also Form No. 23, Sec. II. p. 477, *supra*.

Registered land on trust for sale.

The L. R. Act, 1925, s. 102, relating to priority cautions, applies to minor interests in purchase-money of land held on trust for sale; the proceeds of sale are equitable interests in land.

(*y*) *I.e.*, before the M. W. P. Act, 1882.

Malin's Act.

(*z*) The Married Women's Reversionary Interests Act, 1857 (Malin's Act, 20 & 21 Vict. c. 57), enabled a married woman with the concurrence of her husband and by deed acknowledged to dispose of her reversionary interest under an instrument, not being a marriage settlement, made after 1857. A Will republished after 1857 is not an instrument made after that day:

Acknowledgments unnecessary.

part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

(1) and (2) (*Recite Will of G. H., giving a legacy of* £10,000 *to Trustees, defining them as "the Trustees" in trust for L. M., for life and then for her children who attain twenty-one, or being daughters on previous marriage, death of testator, and probate of Will*): Will, &c.

(3) The Trustees have set aside the sum of £10,000 to answer the said legacy, and have paid thereout the sum of £—— for legacy duty and invested the residue thereof in the purchase of the investments mentioned in the Schedule hereto: Setting apart of legacy.

(4) The said L. M. (who was born on ——) has six children, of whom the said C. B. (who intermarried with the said A. B. on the —— day of —— 1882) is one, and all of whom have attained the age of twenty-one years: Children of tenant for life.

(5) No settlement or agreement for a settlement has been made on the marriage of the said C. B. or otherwise affecting her interest under the recited Will: No settlement.

(6) The Vendors have agreed to sell to the Purchaser the one-sixth or other reversionary share and interest of the said C. B. in the said trust legacy at the price of £——: Agreement for sale.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration, &c., the said C. B., As Beneficial Owner, with the concurrence of the said A. B., her husband, hereby assigns and disposes of, and the said A. B., her husband, As Beneficial Owner, hereby assigns and confirms unto the Purchaser, Assignment by husband and wife of the latter's reversionary interest.

ALL (*a*) THAT the one-sixth share or other interest expectant on the death of the said L. M. to which the said C. B. or the said Parcels.

Re Elcom [1894], 1 Ch. 303; 63 L. J. Ch. 392. After 1925 the deed has not to be acknowledged: L. P. Act, 1925, s. 167. Under *ib.*, s. 169, the court has power to bind the reversionary interest of a married woman under her marriage settlement. Marriage Settlements.

(*t*) See also Form No. 23, Sec. II, p. 477, *supra*. Notice in writing of the assignment must be given to the trustees: L. P. Act, 1925, s. 137; and a *distringas* should be placed on the stocks. Notices, &c.

It should be ascertained that no trust corporation has been appointed to act as registrar of notices under s. 138. It is expedient that arrangements should be made to indorse a memorandum of the notice on the probate. If any of the funds are in court a stop order should be obtained. The usual inquiries should be made of the trustees as to whether or not they have received notices of any dealings with the reversionary share.

If the personalty included registered leasehold land, see note at the head of this Group and the note to the last Prec., which will apply equally to this case. Registered land.

A. B. in her right is now or may hereafter be or become entitled under the recited Will of the said G. H., deceased, in the investments mentioned in the Schedule hereto, or other the investments for the time being representing the said trust legacy of £10,000 and the annual income thereof,

Habendum. TO HAVE AND RECEIVE the premises unto the Purchaser absolutely, but subject to all duties which may become payable in respect of the same on the death of the said L. M.

IN WITNESS, &c.

THE SCHEDULE.

Particulars of investments.

No. VIII.

ASSIGNMENT *of a* POLICY *of* LIFE ASSURANCE.(*b*)

Parties. THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

Agreement for sale. WHEREAS the Vendor is entitled free from incumbrances to the policy of assurance on his own life hereinafter mentioned and assigned, and has agreed to sell the same to the Purchaser at the price of £———:

Assignment of policy. NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser,

Parcels. ALL THAT policy (*Form No.* 22, *Sec. II*, *p.* 477, *supra*),

Habendum. TO HAVE AND RECEIVE the same unto the Purchaser absolutely.

Certificate. [*Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

Assignment of policy of life assurance. (*b*) This deed will pass the right to sue on the policy, if a written notice of the assignment is given to the society as prescribed by the Policies of Assurance Act, 1867, s. 3, only if it is duly stamped, but not otherwise, see Stamp Act, 1891, s. 118; Alpe, 18th ed., 266-7; Highmore, 4th ed., 305. A form of notice (in duplicate) of an assignment of a policy by way of mortgage will be found in Instruments relating to Mortgages, *infra*, which can be adapted to an absolute assignment by omitting "by way of mortgage." The notice does not affect the position as between the persons interested in the policy, and a subsequent incumbrancer. The notice, does not confer priority over a previous incumbrancer who did not give notice: *Newman* v. *N.* (1885), 28 Ch. D. 674; 54 L. J. Ch. 598. But the usual enquiries should be made of the society to ascertain whether or not they have received any notice of dealings. As to legal assignments of things in action: L. P. Act, 1925, s. 136; that section does not (sub-s. 2) affect the provisions of the Act of 1867.

GROUP J.—CONVEYANCES ON SALES OF MISCELLANEOUS INTERESTS IN PROPERTY AND THINGS IN ACTION.

No. I.

ASSIGNMENT *of a* BOND DEBT (*a*) *by indorsement on the bond.*

THIS ASSIGNMENT is made, &c., BETWEEN the within-named A. B. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:— Parties.

(1) The principal sum of £—— secured by the within-written bond remains owing with arrears of interest thereon amounting to £——: State of debt.

(2) The Vendor has agreed to sell the said bond debt to the Purchaser at the price of £——: Agreement to sell.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt, &c.), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser: Assignment of bond debt.

ALL THAT the principal sum of £—— secured by the within-written bond, and the sum of £——, now due for arrears of interest thereon, and all interest henceforth to become due for the same, and also the said bond and the full benefit and advantage thereof, Parcels.

TO HOLD unto the Purchaser absolutely. Habendum.

2. THE Vendor hereby covenants with the Purchaser that the said principal sum of £—— now remains owing on the said bond, together with the sum of £—— for arrears of interest thereon. Covenant by Vendor that bond debt remains due.

[3. *Add Form No.* 8, *p.* 483, *if required.*] Certificate.

IN WITNESS, &c.

(*a*) Notice of the assignment must be given to the debtor, and from the date of such notice the assignment is effectual to pass the legal right to the bond and all legal remedies thereunder; hence a power of attorney is unnecessary: L. P. Act, 1925, s. 136; see also *Walker* v. *Bradford Old Bank* (1884), 12 Q. B. D. 511; 53 L. J. Q. B. 280. This notice must be in writing, even though the debtor cannot read, other means of bringing the assignment to the debtor's notice will not be sufficient: *Hockley &c.* v. *Goldstein*, 25 Com. Cas. 284; see also *Re Westerton* [1919], 2 Ch. 104; 88 L. J. Ch. 302. Legal right to thing in action passes on notice of assignment.

It is conceived that the stamp on this assignment will be 6*d.* for every £100 of the money owing on the bond, including the arrears of interest.

No. II.

ASSIGNMENT *of a* JUDGMENT DEBT.(*b*)

Parties. THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Judgment. (1) The Vendor on the —— day of —— obtained a judgment in the High Court of Justice (King's Bench Division) against E. F., of, &c., in an action having the short title of A. B. *v.* E. F., 19— B., No. ——, for the sum of £——, and costs:

Amount of judgment debt. (2) The sum of £—— is now owing for principal, interest and costs on the said judgment [which has been duly registered as a writ or order under the Land Charges Act, 1925]:

Agreement for sale. (3) The Vendor has agreed to sell to the Purchaser the said judgment debt at the price of £——

Assignment. NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration, &c. (the receipt, &c.), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser

Parcels. ALL THAT the sum of £——, now owing on the said judgment as hereinbefore mentioned, and all interest hereafter to become due on the said judgment, and the full benefit of the said judgment and of all other securities for the said debt,

Habendum. TO HOLD unto the Purchaser absolutely.

Covenant. 2. THE Vendor hereby covenants with the Purchaser that the whole of the said sum of £—— remains owing on the said judgment.

Certificate. [3. *Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

Assignment of part of judgment debt. (*b*) See note to last Prec. The assignee of part of a judgment debt cannot issue execution upon it: *Forster* v. *Baker* [1910], 2 K. B. 636; 79 L. J. K. B. 664; but may maintain an action in respect of such part, if all persons interested in the debt, or in resisting it, are parties to the action: *Conlan* v. *Carlow C. C.* [1912], 2 Ir. R. 535; *Re Steel Wing Co.* [1921], 1 Ch. 349; 90 L. J. Ch. 116. In *Goodman* v. *Robinson* (1886), 18 Q. B. D. 332; 56 L. J. Q. B. 392, it was decided that the assignee of a judgment debt can obtain a garnishee order, followed and approved in *Re Freshwater and Yarmouth Ry.*, 29 T. L. R. 568; but in *Forster* v. *Baker* [1910], 2 K. B. 636; 79 L. J. K. B. 664, Fletcher Moulton, L.J., said that he was not prepared to hold, without further argument, that the assignee of a judgment debt is in the same position as an original creditor, and that *Goodman* v. *Robinson* would require careful consideration. This statement does not affect the present state of the law. A judgment gives an equitable charge on land subject to the registration of the writ or order: L. P. Act, 1925, s. 195. As to enforcing equitable charges: *ib.*, ss. 90-1.

Equitable charges.

No. III.

ASSIGNMENT *of the* COPYRIGHT *in a* BOOK.(*c*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: Parties.

WHEREAS the Vendor is absolutely entitled to the copyright of the several editions of the book mentioned in the Schedule hereto, and has agreed to sell the same to the Purchaser at the price of £——: Title of Vendor to copyright

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser, Assignment of copyright.

ALL THAT the copyright in the several editions of the book mentioned in the Schedule hereto,

TOGETHER with the exclusive right for the Purchaser and the persons deriving title under him to publish (*d*) any future editions of the said book under the title "——," with or without variations,

TO HAVE AND RECEIVE the premises unto the Purchaser absolutely. Habendum.

[*Add Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c.

THE SCHEDULE.

(*Insert the particulars of the book, and add at the end of the Schedule "Entered at Stationers' Hall on the —— day of ——," if such is the case.*)

(*c*) The law as to copyright is now governed by the Copyright Act, 1911, which repeals the Act of 1842. S. 24 of the Act has not been re-enacted, hence registration at Stationers' Hall is not necessary as a condition precedent to suing in respect of a copyright. As to the present presumption of ownership, see the Act of 1911, s. 6 (3). Copyright

If an author has prepared the work under instructions from his employers and has been paid the usual fees for his professional services, it seems that to avoid any question as to the right of his personal representatives to claim the copyright at the end of 25 years from his death, he should merely execute a deed declaring that the original copyright belongs to his employers; an assignment would be some evidence that the copyright originally belonged to him. Right of reverter.

(*d*) See *Booth* v. *Lloyd* [1910], 26 T. L. R. 549.

No. IV.

ASSIGNMENT *of* LEASEHOLDS *and of the* GOODWILL *and* PROPERTY *of a* BUSINESS, *including a* TRADE MARK.(*e*) (*Legal Estate.*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor) [and E. B., his wife], of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

(1) (*Recite Lease to Vendor, Form No.* 28, *Sec. I, p.* 468):

Vendor carries on business, and is the registered owner of trade mark.

(2) The Vendor has for some years past carried on the trade or business of —— on the premises, and he is the registered proprietor, in connexion with the said business, of a trade mark, No. —— in the Register of Trade Marks for goods in classes —— of the Third Schedule to the Trade Marks Rules, 1906 :(*f*)

Agreement for sale of goodwill, &c.

(3) The Vendor has agreed to sell to the Purchaser the said leasehold premises and all his interest and goodwill in the said trade or business, together with the said trade mark and the book or other debts hereinafter mentioned, at the price of £——,(*g*) and upon the terms hereinafter mentioned:

Delivery to Purchaser of books of account.

(4) The Vendor has delivered to the Purchaser the books of account and other books relating to the said business, and in the said books are contained the amounts and particulars of the debts respectively due and owing to and from the Vendor, and also the particulars of the contracts and engagements to which he is liable in respect of the said trade or business:

User of trade name.

(*e*) Under this deed the purchaser will be entitled to use the name of the vendor for the purpose of showing that the business was that formerly carried on by him, but he must not exercise that right so as to expose the vendor to liability: *Thynne* v. *Shove* (1890), 45 Ch. D. 577; 59 L. J. Ch. 509. The vendor cannot, apart from express agreement, compel the purchaser to erase the name of the vendor carved over a shop: *Townsend* v. *Jarman* [1900], 2 Ch. 698; 69 L. J. Ch. 823.

Trade mark; registration of assignment.

A registered trade mark may be assigned only in connexion with the goodwill of the business: Trade Marks Act, 1905, s. 22; and see Highmore, 4th ed., 158. This assignment should be registered at the Patent Office: s. 33.

Stamp.

The stamp on this assignment will be *ad valorem* on the amount of the purchase-money *plus* the amount of the debts against which the purchaser covenants to indemnify the vendor.

Rules.

(*f*) See 1906, W. N., Part II, p. 75.

Stock-in trade.

(*g*) The stock-in-trade, if included in the sale, should be paid for separately, and should be made over to the purchaser by delivery. After such delivery the vendor should give a receipt for the purchase-money with an inventory attached.

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £——, now paid by the Purchaser to the Vendor (the receipt, &c.), and also in consideration of the covenants on the part of the Purchaser hereinafter contained, the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser, Assignment. Parcels.

First, all the premises comprised in and demised by the recited Lease, Lease.

Secondly, all the interest and goodwill of the Vendor in the said trade or business of ——, Goodwill.

Thirdly, the said trade mark and all privileges incidental thereto, Trade mark.

And fourthly, all the book (*h*) and other debts now due and owing to the Vendor on account of the said trade or business, and the benefit of all contracts and engagements entered into with the Vendor in respect of the said trade or business,(*i*) Book debts.

To hold, as to the leasehold premises, unto the Purchaser for the residue of the term granted by the recited Lease, subject to the rent thereby reserved and to the covenants and conditions therein contained and henceforth on the part of the lessee to be paid, observed and performed, and as to the other premises hereby assigned, unto the Purchaser absolutely. Habendum.

2. The Vendor, for the consideration aforesaid, hereby irrevocably appoints the Purchaser and the persons deriving title under him to be his attorney or attorneys for him and in his name or otherwise to sue for, recover and receive, and give effectual discharges for the debts hereby assigned. Power of attorney.

3. The Vendor hereby covenants with the Purchaser as follows :— Covenants by Vendor—

(1) That the amount and particulars of the debts due and owing to and from the Vendor on account of the said trade or business, and the particulars of the contracts and engagements to which he is liable in respect of the said trade or business, are correctly stated in the books of account and other books so delivered as aforesaid by the Vendor to the Purchaser. That books are correct.

(*h*) Bills receivable and bonds are book debts, but not cash at bankers (*Re Stevens* (1888), W. N. 110, 116; *Re Haigh* [1907], 51 Sol. J. 343); a bill left at bankers and not actually discounted may be treated as a book debt: *Dawson* v. *Isle* [1906], 1 Ch. 633; 75 L. J. Ch. 338. Notice in writing of the assignment must be given to the debtors. Book debts.

(*i*) As to the element of personal confidence which renders a contract unassignable: *Cooper* v. *Micklefield, &c., Co.* [1912], 107 L. T. 457.

That Vendor will pay all sums exceeding the amount appearing due by the books.

(2) That the Vendor will pay all the sums (if any) which may now be due and owing from the said trade or business in excess of the amounts which, by the said books, appear to be so due and owing.

That he will do his best to secure custom to Purchaser.

(3) That the Vendor will from time to time, and at all times hereafter, use his best endeavours to promote the said trade or business, and to secure to the Purchaser and the persons deriving title under him, the full advantage of the connexion and custom of the Vendor in the said trade or business, but so that the Vendor shall not be required to incur any expense in or about the performance of this covenant.

Will not carry on, &c., business within specified limit.

(4) That the Vendor will not at any time hereafter [*or* during a term of —— years from the date hereof] either alone or jointly, or in partnership with, or as agent for any other persons (and whether directly or indirectly) carry on or be concerned or interested in, or assist any other persons to carry on or be concerned or obtain any interest in, the trade or business of a —— within —— miles from ——(*j*) or solicit any of the previous customers of the said business.

Covenant by Vendor's wife to same effect.

[4. THE said E. B. hereby covenants with the Purchaser that the said E. B. will not by means of her separate estate or otherwise carry on or be concerned or interested in the trade or business of a —— within the limits aforesaid, or do or be a party to any act or thing which, if done by the Vendor, would be a breach of any of the covenants on his part hereinbefore contained.]

Covenant by Purchaser to pay rent, &c.

5. (1) THE covenants implied under section seventy-seven (1) (C) of the Law of Property Act, 1925, are incorporated in these presents.

Covenant to pay debts, &c.

(2) THE Purchaser hereby also covenants with the Vendor that the Purchaser will from time to time, and at all times hereafter, keep indemnified the Vendor and his estate and effects from and against the several sums of money which by the said books appear to be due and owing from the Vendor in respect of the said trade or business, and also from and against the contracts and engagements to which by the said books the Vendor appears to be now liable, and also all interest, costs, expenses, losses, claims and demands on account of the same debts, contracts and engagements respectively.

(*j*) See *Cash* v. *C.* [1902], 86 L. T. 211.

[6. THE assignment hereinbefore contained does not include any personal chattels forming the stock-in-trade of the business.] [Exception of chattels.]

[7. *Add acknowledgment, &c., as to documents, Form No.* 4, *Sec. III, p.* 480, *supra, if required.*] Documents.

IN WITNESS, &c.(*k*)

SECTION V.

MISCELLANEOUS INSTRUMENTS.

No. I.

FURTHER ASSURANCE *under L. P. Act*, 1925, *s.* 66, *for confirming* LEGAL ESTATES *which have not been validly created.*(*a*) (*Legal Estate.*)

THIS FURTHER ASSURANCE is made this (*date*) by A. B., of, &c. (hereinafter called the Grantor): WHEREAS:—

(1) Under a Settlement, dated, &c., and made, &c., the properties respectively described in the Schedules hereto at the several dates of the transactions mentioned in those Schedules stood limited to uses under which R. B. was tenant for life in possession, with remainder to the use of his first and other sons successively according to seniority in tail male, with divers remainders over: And at the said dates L. T. and M. T. (hereinafter called the Trustees) were the Trustees of the said Settlement for the purposes of the Settled Land Acts, 1882 to 1890: But the said Settlement did not confer any power on a tenant for life to delegate his statutory powers to an attorney or otherwise:(*b*) Settlement in force while the invalid transactions were effected.

(*k*) If the leaseholds are registered, it will probably be best to use the above Prec. (with slight verbal alterations) and in addition to transfer the leaseholds by an Instrument of Transfer, without recitals, in Form No. 32, L. R. R. 1925, r. 115, which will require no stamp duty: *ib.*, r. 94. Registered land and a business.

(*a*) A further assurance (stamp 10*s.*) made under L. P. Act, 1925, s. 66, operates in a similar way to a conveyance made before 1926 to a grantee in fee simple to uses requisite for confirming past transactions or to an appointment, under a power, to uses for that purpose. But s. 66 applies to leasehold as well as other land for converting or confirming equitable interests "capable of subsisting as legal estates" which originally took effect only in equity or were invalid by reason of some technical defect. "Legal Estates" (*i.e.*, fees simple or terms of years absolute) alone can be created or confirmed under the section. No special power or form is required to confirm equitable interests: *ib.*, s. 4. The operative parts of the Prec. are set out in the 5th Sched., Form No. 7. The further assurance can be made by any estate owner, save that if he is in a fiduciary position the leave of the court must be obtained: *ib.*, s. 66 (2); unless this is dispensed with by the trust instrument. Deed operating as a Conveyance or appointment to uses for creating legal estates. Leave of the court when requisite.

(*b*) Under T. Act, 1925, s. 25, a trustee (including a tenant for life and statutory owner) is given power after 1925 to delegate his statutory and Power to delegate.

Invalid Power of Attorney.

(2) By a Power of Attorney dated, &c., under the hand and seal of the said R. B., he, with a view to his absence from the United Kingdom, purported to appoint X. Y., of, &c. (hereinafter called the Attorney), to be his attorney in his name or otherwise to exercise all the powers conferred on the said R. B. as tenant for life under the recited Settlement: And declared that the said power of attorney should be irrevocable for one year from the date thereof:

Invalid dealings by the Attorney.

(3) During the absence of the said R. B. from the United Kingdom the transactions mentioned in the Schedules hereto were expressed to be carried out by the Attorney in purported exercise of the said power of attorney, but all capital money arising in respect of the said transactions was duly paid to the Trustees as the Grantor hereby admits:

Vesting of fee simple in tenant for life.

(4) By virtue of the Law of Property Act, 1925, First Schedule, Part II, the said properties became vested in the said R. B. in fee simple on the trusts of the recited Settlement:

Vesting deed.

(5) By a Vesting Deed, dated, &c., and made between the Trustees of the one part and the said R. B. of the other part, the Trustees declared that the said properties were (with other property) vested in the said R. B. in fee simple on the trusts of the recited Settlement, and that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925:

Death of tenant for life and probate.

(6) The said R. B. died on, &c. (while still abroad), and his Will, dated, &c., was on the —— day of —— 19—, duly proved by the Trustees at the —— Probate Registry, such probate being limited to the settled land comprised in the recited Settlement:

Simple assent.

(7) By an Assent in writing, dated, &c., the Trustees assented to the vesting in the Grantor of the said properties (with other property) for an estate in fee simple without any nomination of trustees for the purposes of the Settled Land Act, 1925: (*c*)

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other powers to any person (including a trust corporation), when intending to remain out of the United Kingdom for more than one month. But the donee must not be his sole co-trustee, not being a trust corporation. Hence if the transactions had taken place after 1925 and the provisions of that section had been complied with, the dealings mentioned in the text would not have been invalid.

(*c*) This shows that the settlement had come to an end, and that the grantor had disentailed; had there been any subsisting family charges or powers of charging, S. L. Act trustees would have been nominated. In such a case it would have been necessary to have obtained an order of the court granting leave to execute the further assurance; the costs of such an order are

(8) The Grantor is desirous of legally confirming the transactions mentioned in the Schedules hereto and any derivative titles which would have been legal had the original transactions been validly effected in the first instance in manner hereinafter appearing : Desire to confirm transactions.

NOW THESE PRESENTS WITNESS and the Grantor hereby declares that his legal estate in the premises affected to which he is entitled as aforesaid shall go and devolve in such manner as may be requisite for legally confirming the interests capable of subsisting as legal estates expressed to have been transferred or created by the documents mentioned in the Schedules hereto or any of those documents, and any dealings with the interests so confirmed which would have been legal if those interests had in the first instance been validly transferred or created : Confirmatory declarations.

PROVIDED ALWAYS that subject to such confirmation of interests and dealings, nothing herein contained shall affect the legal estate of the Grantor in the premises.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of Conveyances on Sale.

Date of Conveyance.	Name of Purchaser.	Property expressed to have been conveyed.

THE SECOND SCHEDULE.

Particulars of Grants of Easements.

Date of Grant.	Name of Grantee.	Description of the Easement.	Property intended to be affected.

insignificant compared with the costs of a Private Act of Parliament to confirm the titles. If arrangements can be made to enrol the further assurance at the Central Office this is expedient. Enrolment.

The above Prec. is not directly appropriate to registered land, the legal estate in which must be disposed of by a registered disposition, see L. R. Act, 1925, s. 69 (4) ; but in some cases resort may be had to a deed of confirmation on these lines to be followed by an application for rectification of the register if a transfer in the ordinary form cannot be obtained. Registered land: confirmation of title

THE THIRD SCHEDULE.

Particulars of Leases.

Date of Lease.	Name of Lessee.	Property expressed to be demised.	Term.	Yearly Rent.

No. II.

FURTHER ASSURANCE *of a* PIECE *of* LAND *which had been unintentionally omitted from a* CONVEYANCE *of the* BULK *of the* PROPERTY, *by Indorsement on Principal Conveyance.* (*Legal Estate.*)

Parties.

THIS FURTHER ASSURANCE is (*d*) made, &c. BETWEEN the within-named A. B. (hereinafter called the Vendor), of the one part, and the within-named C. D. (hereinafter called the Purchaser), of the other part:

Omission of land, and agreement to execute further assurance.

WHEREAS before the execution of the within-written Conveyance the Vendor agreed to sell to the Purchaser the property hereinafter described, as well as the lands comprised in that Conveyance, at the within-mentioned price of £——, but by an unintentional omission the property hereinafter described was not described or referred to in the said Conveyance, and for the purpose of rectifying such omission the Vendor has agreed to execute such deed of confirmation as is hereinafter contained:

(*d*) This deed should be stamped 10*s*. As to registered land, see note to last Prec.

Vesting of legal estates.

Though under L. P. Act, 1925, 1st Sch., Part II, legal estates outstanding on 1st January, 1926, are got in and vested in the person who immediately after the commencement of that Act would be entitled to call for a conveyance, still that part of the schedule does not vest in a purchaser or his personal representatives any legal estate which he has contracted to acquire and in regard to which a contract, including an agreement to create a legal mortgage, is pending at the commencement of that Act, although the consideration may have been paid or satisfied and the title accepted, or render unnecessary the conveyance of such estate (*ib.*, para. 7 (*j*)); hence even where the legal estate was left outstanding before 1926 a further assurance will be required if it can be shown that there was a pending contract. The mischief aimed at was to prevent a purchaser from evading the payment of *ad valorem* stamp duty; whether or not the courts would hold that in the case in the text the execution of the principal conveyance was sufficient for this purpose to negative the existence of a pending contract it is safer to take a further assurance.

Contracts must be completed by conveyance.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the premises, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser, Conveyance.

ALL, &c. (*see Forms in Sec. II, pp.* 471, *et seq.*), Parcels.

TO HOLD unto the Purchaser in fee simple. Habendum

IN WITNESS, &c.

No. III.

ACKNOWLEDGMENT *of* RIGHT *to* PRODUCTION *of* DEEDS *and* UNDERTAKING *for* SAFE CUSTODY. (*Several forms adapted to the circumstances.*)(*e*)

1. (*Where the Vendor is Beneficial Owner, not being a tenant for life, but including an absolute owner entitled subject to equitable interests which will be overreached by the Conveyance.*) By Beneficial Owner by separate writing.

(*e*) See L. P. Act, 1925, s. 64, and General Conditions of 1925.

As a general rule it is more convenient to insert the acknowledgment in the deed of conveyance, and there is now no objection to this, having regard to L. P. Act, 1925, s. 45 (1) (*b*), which precludes a purchaser from requiring the production of a document dated prior to the stipulated commencement of title, merely because it is covenanted to be produced or otherwise noticed in an abstracted deed. But there may be special circumstances rendering a separate instrument desirable. It need not be under seal, but it should have a 6*d.* agreement stamp. It can be executed on behalf of a corporation by an agent: L. P. Act, 1925, s. 74 (2).

If desired, the acknowledgment may be given in the form of an agreement (under a 6*d.* stamp) as follows:— Stamp.

AN AGREEMENT, made the —— day of ——, 19—, Between A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part, Supplemental to a Conveyance (hereinafter called the Conveyance) bearing even date herewith, and made between the Vendor of the 1st part, E. F. of the 2nd part, and the Purchaser of the 3rd part (being a Conveyance on Sale of ——, in the County of ——): Full form of acknowledgment and undertaking.

WHEREAS upon the execution of the Conveyance it was agreed that the Vendor should retain the custody of the documents mentioned in the Schedule hereto and give such acknowledgment and undertaking in respect of the same as are hereinafter contained:

NOW the Vendor hereby acknowledges the right of the Purchaser to production of the documents mentioned in the

To X. Y., of, &c. (*Purchaser*).

I, A. B., of, &c. (*Vendor*), hereby acknowledge your right to production and delivery of copies of the documents mentioned in the Schedule hereto, which documents relate (among other property) to a piece of land [*or* to property] situated at, &c., conveyed to you by a Conveyance dated the —— day of ——, 19—, and made, &c.: AND I hereby undertake for the safe custody of the said documents.

AS WITNESS my hand this —— day of ——, 19—.

THE SCHEDULE.

Documents retained in the custody of the said A. B.

1st February, 1890. Mortgage of this date, made, &c.
12th December, 1895. Reconveyance of this date, &c.

By persons in a fiduciary position.

2. (*Where Vendors are Trustees, including tenants for life, statutory owners, mortgagees, and personal representatives, but not an absolute owner entitled subject to an equitable interest which will be overreached.*)

To X. Y., of, &c. (*Purchaser*).

WE, C. D. and E. F. (*Trustees, &c.*), hereby acknowledge, &c. (*as in No.* 1, *omitting the undertaking for safe custody*).(*f*)

By different persons as to different deeds.

3. (*Where different persons give the acknowledgment as to different deeds.*)

To X. Y., of, &c. (*Purchaser.*)

I, A. B., of, &c., having in my custody the documents mentioned in the first part of the Schedule hereto AND WE, C. D., of, &c., and E. F., of, &c. (*Trustees*), having in our custody the documents mentioned in the second part of the said Schedule, AND I, G. H., of, &c., having in my custody the documents mentioned

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Schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

AS WITNESS, &c.

THE SCHEDULE.

(*To contain a list of the documents retained by the Vendor.*)

By mortgagee and mortgagor.

(*f*) Where a sale is made by a mortgagor with the concurrence of mortgagees who retain the deeds, the mortgagees will give an acknowledgment in the conveyance, and the mortgagor can also give a covenant, see Form No. 5, Sec. III, p. 480, if required. In practice the acknowledgment by the mortgagees without any undertaking is generally accepted, see, however, General Conditions of 1925.

in the third part of the said Schedule, all which documents comprised in the first, second, and third parts of the said Schedule relate, &c. (*as in No.* 1), hereby acknowledge your right to production and delivery of copies of the said documents respectively: AND WE, the said A. B. and G. H., hereby undertake for the safe custody of the documents mentioned in the first and third parts of the said Schedule respectively.

AS WITNESS, &c.

THE SCHEDULE.

First Part.

Documents retained in the custody of the said A. B.

Second Part.

Documents retained in the custody of the said C. D. and E. F.

Third Part.

Documents retained in the custody of the said G. H.

By one Purchaser to another Purchaser.

4. (*Where upon a sale in Lots the deeds have been delivered to one of the Purchasers, who gives an acknowledgment, &c., to another Purchaser.*)(*g*)

To X. Y., of, &c. (*a Purchaser*).

I, A. B., of, &c. (*largest Purchaser*), having lately received from L. M., of, &c. (*Vendor*), the documents mentioned in the Schedule hereto, which documents relate to certain property at, &c., purchased by me from the said L. M., and conveyed to me in fee simple by a Conveyance dated the —— day of ——, 19—, and also to certain land at ——, lately purchased by you from the said L. M., and conveyed to you in fee simple by a Conveyance dated, &c., do hereby acknowledge your right to production and delivery of copies of the said documents, and I hereby undertake for the safe custody thereof.

AS WITNESS, &c. [*Add Schedule.*]

(*g*) This arrangement is sometimes made. But it is more convenient for the vendor to give the acknowledgment, &c., to every purchaser, retaining the documents for that purpose until all the purchases have been completed. The liability under the vendor's acknowledgment will pass to the purchaser to whom the documents are delivered. In the case of registered land, the vendor must always retain control of the land certificate until all the purchasers have been registered. When a mortgage or charge is registered the land certificate will be kept at the Land Registry. Registered land.

5. (*Where the deeds are handed over to a Purchaser of the bulk of the property affected by them, he giving an acknowledgment, &c., to the Vendor.*)(*h*)

By Purchaser to Vendor.

To X. Y., of, &c. (*Vendor*).

I, A. B., of, &c. (*Purchaser*), having received from you the documents mentioned in the Schedule hereto, which documents relate to certain lands situated at, &c., conveyed by you to me in fee simple by a Conveyance dated the —— day of ——, 19—, and also to certain easements or other rights which remain your property, do hereby acknowledge your right to production, &c. (*as in No. 4 to end*).

AS WITNESS, &C.

THE SCHEDULE.

No. IV.

STATUTORY DECLARATION *as to* IDENTITY *of* LANDS *contracted to be sold with* PROPERTY *to which a* TITLE *is shown.*(*i*)

I, A. B., of, &c. (*Declarant*), solemnly and sincerely declare as follows :—

That declarant knows the property.

1. I KNOW the farm and lands situated in the Parish of ——, known as the —— Farm, particularly described in the Schedule

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Vendor's right to retain documents.

(*h*) This is not a usual arrangement, as the vendor is entitled to retain the deeds, however small may be the property remaining unsold, but it is frequently done where the vendor merely reserves an easement. Under L. P. Act, 1925, s. 45 (9), a vendor, besides having a right to retain documents relating to any part of the land unsold, may retain trust instruments and instruments relating to the appointment and discharge of trustees of a subsisting trust.

Registered land.

Where the land is registered with an absolute title it is seldom that a purchaser is concerned with any documents of title, for the entries on the register supersede them. But where the title is possessory he is concerned with the documents relating to the title down to the date of first registration and with those affecting subsequent dealings relating to matters in regard to which the register may not be conclusive.

There is no objection to including an acknowledgment in an instrument of transfer if it is taken in duplicate.

Statutory Declarations. When made in Colonies. By vendor.

(*i*) See Statutory Declarations Act, 1835. A "statutory declaration" means a declaration made under that Act: Interp. Act, 1889, s. 21. There appears to be no settled practice as to admitting as evidence a statutory declaration made in the Colonies: *Re Hardwick* [1907], W. N. 180.

A purchaser is not bound to accept a statutory declaration made by the vendor: *Hobson* v. *Bell* (1839), 2 Beav. 17; 8 L. J. Ch. 241. In practice it is always advisable to obtain a statutory declaration from some independent

hereto and delineated on the plan hereto annexed, and which farm and lands have been contracted to be sold by C. D., of, &c., to E. F., of, &c.

Or,

I KNOW the piece of land [*or* the house and garden] situated at ——, delineated and shown on the plan (*as above*).

Possession of property by Vendor and his predecessor in title.

2. THE said farm and lands were formerly the property of F. D., the father of the said C. D., and were in his possession at the time of his death, which happened in the year 19—. On his death, and by virtue of an Assent in writing made by the personal representatives of the said F. D., the same came into the possession of the said C. D., who has remained in undisturbed possession or receipt of the rents and profits thereof up to this time.

Or,

THE said piece of land is part of the land which was conveyed to F. D., the father of the said C. D., by a Conveyance dated the —— day of ——, 19—, by the following description, namely (*set out description verbatim*).

Or,

THE site of the said house and garden is part of a piece of land which was conveyed, &c. (*as above*). The said F. D. built the house in the year 19—, and occupied the same as his residence with the said garden up to the time of his death, which happened on the —— day of ——, 19—. I have been shown an Assent in writing dated —— by the personal representatives of the said F. D., in favour of the said C. D., which describes the said house and garden as follows (*set out the description*). I verily believe that the said F. D. had not at the date of his death any house at —— other than the house above described.

Sources of knowledge.

3. I AM able to declare as above from having acted as the agent of the said C. D., and of his father, the said F. D., for the last —— years and upwards, during the whole of which time I collected the rents of the property [*or* from having been the tenant of the property under the said C. D., and the said F. D.

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person if possible. It sometimes saves time if the purchaser prepares the draft and submits it to the vendor for approval.

Stamp.

The stamp is 2*s.* 6*d.*, even if made before a justice of the peace (Fin. Act, 1907, s. 6); but if required for use at the Land Registry no stamp duty is charged.

for the last —— years and upwards, *or* from having lived in the Parish of —— for the last —— years, and having been well acquainted during the whole of that time with the D. family]: And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

DECLARED BEFORE ME, &c. (*Commissioner for Oaths*).

No. V.

STATUTORY DECLARATION *as to* PEDIGREE.(*j*)

I, A. B., of, &c (*Declarant*) solemnly and sincerely declare as follows:—

Marriage of grandfather.

1. I AM one of the grandchildren of C. B., who was, as I have been informed and believe, married once only, namely, to E., on the —— day of —— 18—. The certificate of the said marriage is now produced to me and marked B.1.

Constitution of family.

2. I VERILY believe that the said C. B. had three children only, namely, F. B., G. B., and H. B. The said F. B., who was born on the —— day of ——, died on the —— day of ——, without ever having been married. She is the person mentioned in the certificates of birth and death now produced to me and marked B.2 and B.3.

Disappearance of member of family.

3. THE said G. B. left England for —— in the year——, and since that time neither he nor any descendants of his have ever been heard of by any of his family or connexions, and to the best of my knowledge, information and belief he has died without [leaving] ever having had any issue. I never heard of his ever having married.

Proof of marriage; birth of issue; death.

4. THE said H. B. was my father. He was born on the —— day of ——. He was married once only, namely, to J. on the —— day of ——. There was issue of their marriage one child only, namely, myself. I was born on the —— day of ——. The certificates produced to me and marked respectively B.4, B.5 and B.6, are the birth and marriage certificates of my father and my own birth certificate. My father died on

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(*j*) See note to last Precedent.

Counsel's certificate.

Statutory declarations as to pedigree will not be required as to matters occurring after 1925, when title is being made to a legal estate in land, but when counsel is giving his certificate of title (see General Conditions of 1925 and S. L. Act, 1925, s. 110 (2) (i) (ii) (iii)) he may require one to be made.

the —— day of —— 19—, leaving my mother, the said J. B., and myself him surviving. The death certificate of my father is now produced to me and marked B.7.

5. I MAKE this declaration from tradition in my family [*or* from my own personal knowledge] conscientiously believing, &c. (*as in last Precedent*). Means of knowledge.

No. VI.

MEMORIAL *of a* CONVEYANCE *of a* LEGAL ESTATE *in land in* MIDDLESEX.(*k*)

Year 19—. B. —— No.—

LAND REGISTRY. MIDDLESEX DEEDS ACTS.
MEMORIAL OF A DEED.

PARTICULARS FOR THE INDEX.

Grantor's Surname.	Grantor's Christian Name.	Parish.
Smith.....	John.....	Hounslow.

(*k*) Memorials to be registered in a local deeds registry will, as respects instruments made or coming into operation after 1925, be confined to those which transfer or create or are evidence of the devolution of a legal estate: L. P. Act, 1925, s. 11; these include charges by way of legal mortgage, probates and letters of administration: *ib.* But in Yorkshire general equitable charges, equitable easements and estate contracts can be registered as land charges (not by way of memorial) under L. C. Act, 1925, s. 10 (6). A statement of the principal provisions of the Middlesex Registry Acts, 1708 and 1891, will be found in the Dissertation, p. 154, *supra*. Registration confined to legal estates.

The First Schedule to the Middlesex Reg. Act of 1891 and the Rules (W.N., 1892, Orders and Rules, p. 4), though it is probable that new rules will be made before 1st January, 1926, made under that Act prescribe regulations as to memorials which, read together, are in effect as follows:— Regulations as to memorials, to be written or printed on paper of a prescribed size, &c.

The memorial must be written or printed on the best white loan paper, sixteen inches long by ten inches wide, with an inner margin two inches wide and an outer margin three-quarters of an inch wide, and must be left at the office by hand, must bear Land Registry stamps for the amount of the fees, and be accompanied by the original instrument.

The memorial must be under the hand of some or one of the grantors, or some or one of the grantees (or in the case of a Will before 1925, some or one of the devisees), his or their [heirs], executors, or administrators, guardians, or trustees, attested by one witness, *such witness to be a witness or one of the witnesses to the execution of the original instrument*, unless at the date of the memorial every such witness is dead or absent from the United Kingdom or cannot be found, or some other sufficient cause exists to prevent it. In such cases a statutory declaration must be furnished and left with the memorial, stating the reason why the witness is not one of the witnesses to the instrument. Signature and attestation. Witness to memorial must be same as witness to instrument.

Registration of probates and administration after 1925.

It is conceived that after 1925 the applicants for the registration of a memorial of a probate or letters of administration should be the personal representatives or one of them, for the Registrar is not concerned with the beneficial interests under the Will or intestacy.

Contents of memorial.

Every memorial of any deed, conveyance [or Will] must contain the day of the month and the year when such deed, conveyance [or Will] bears date, and the names and additions of all the parties to such deed or conveyance, [and of the devisor or testatrix of such Will] and of all the witnesses to such deed, conveyance [or Will] and where practicable the places of their abode, and must express or mention the lands [and hereditaments] contained in such deed, conveyance [or Will], and the names of all the parishes within the county where any such lands [or hereditaments] are lying and being that are given, granted, conveyed [devised] or in any way affected or charged by any such deed, conveyance [or Will] in such manner as the same are expressed or mentioned in such deed, conveyance [or Will] or to the same effect. But these particulars will only be required so far as the same appear from the original instrument, except that the address or description of the witness to the memorial must in all cases be inserted. *Semble*, the words in square brackets are inapplicable to probates and administrations where the testator or intestate died after 1925.

Plans.

Where the instrument contains a plan a copy thereof, or so much thereof as is referred to in the memorial, must be drawn on the memorial, unless owing to its size this cannot be done ; in such case a tracing on linen signed by the person who signs the memorial and by the witness must be left with the memorial and filed at the office.

Production of deed, &c., to Registrar.

Every deed, conveyance and [Will or] probate [of the same] of which a memorial is to be registered, must be produced to an officer of the registry at the time of registering the memorial. A certificate must be indorsed by an officer of the registry on the instrument, mentioning the day on which the memorial is registered, and expressing in what book and under what number the same is registered, and the certificate must be signed by an officer of the registry, and is to be taken and allowed as evidence of the registration in all courts of record whatsoever.

Memorials, how to be registered.

Every memorial must be numbered, and the day of the month and the year when every memorial is registered must be entered in the margin thereof, and the Registrar is to file every such memorial, in order of time as the same are brought to the registry, and register the said memorials in the same order that they respectively come to his hands.

What a sufficient memorial, when more than one writing.

Where there are more writings than one for making and perfecting any conveyance or security which name, mention, or in any way affect or concern the same lands [or hereditaments] it is a sufficient memorial and register thereof if all the said lands [and hereditaments] and the parishes wherein the same lie, be only once named or mentioned in the memorial or register of any one of the deeds or writings made for the perfecting of such conveyance or security, and that the dates of the rest of the said deeds or writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and the places of their abodes, be only set down in the memorials and registers of the same, with a reference to the deed or writing whereof the memorial is so registered that contains or expresses the parcels mentioned in all the said deeds, and directions how to find the registering of the same.

Errors may be rectified.

Every memorial is to be compared by an officer of the registry with the instrument to which it relates ; and any clerical, trifling, or obvious errors may be corrected by him. But if any error is found which appears to the officer unsuitable for such correction, its nature must be notified to the person who has left the memorial in the office, and (unless he satisfies the Registrar

FULL PARTICULARS OF DEED:—

Date of Deed: —— of ——, 19—.

Parties—John Smith, of, &c., Gentleman, of the one part;
Robert Jones, of, &c., Gentleman, of the other part.

Description of lands affected—

ALL THAT, &c. (*as described in deed*).

Witnesses to execution of deed—
by John Smith,
A. B., of, &c.,
and by Robert Jones,
C. D., of, &c.

Signature of grantor [*or* grantee], John Smith [*or* Robert Jones].

Signature of witness to signing of memorial,
A. B., of, &c. [*or* C. D., of, &c., *according to whether the grantor or grantee signs the memorial*].

Instrument to be delivered to ——

No. VII.

MEMORIAL *of a* CONVEYANCE *of a* LEGAL ESTATE *in land in* YORKSHIRE.(*l*)

Volume —. Page —. No. —.

——*Riding of Yorkshire. Registry of Deeds.*

MEMORIAL of a deed of Conveyance for Registration.

Date—1st January, 19—,

Parties—John Smith, of, &c., of the one part;
Robert Jones, of, &c., of the other part.

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that it is sufficient) the memorial may be returned and the registration be cancelled, the fee paid being retained, but no fee charged on a substituted memorial.

Forms of memorials are prescribed by the rules, and are obtainable at the Land Registry.

A memorial to be registered pursuant to any Act for the time being in force relating to the public registering of deeds in England or Ireland is liable to a stamp duty of 2*s.* 6*d.*, unless the instrument to be registered is chargeable with a less duty, in which case the stamp on the memorial will be the same as that on the instrument: Stamp Act, 1891, Schedule. Stamp.

(*l*) See Dissertation, p. 156, *et seq.* Memorials of assurances, Probates and Letters of Administration [in place of Wills] relating to land in Yorkshire were subject to the following (among other) regulations, but it is conceived that new rules will be made before 1926. Regulations as to memorials relating to lands in Yorkshire.

In the case of a deed the memorial must be under the hand and seal of some or one of the parties thereto, or some or one of their or his [heirs],

Description of lands—

ALL THAT, &c. (*as in deed*).

Witnesses—

A. B., of, &c., witness to the execution by John Smith.

C. D., of, &c., witness to the execution by Robert Jones.

(Signed) John Smith. (L.S.)

Witness—X.Y.

(*Other forms of Memorials will be found in the Schedule to the Land Registry* (*Middlesex Deeds*) *Rules*, 1892, *and in the Schedule to the North Riding of Yorkshire Registry Rules*, 1885. *But these will probably be superseded before* 1926.)

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executors, administrators, guardians, or trustees, and must be attested by one or more witnesses, one of whom at least must have been a witness to the execution of the deed, and must contain: (a) the date of the deed; (b) the names and descriptions of the residences and occupations of all the parties to the deed, so far as set out therein; (c) the names and descriptions of the residences and occupations of all the witnesses to the execution of the deed, so far as appear therein; (d) a description of all the lands affected by the deed within the riding, and the names of all the parishes wherein the same are situate, in such manner as the same are expressed or mentioned in the deed, or to the same effect; (e) the name and description of the residence and occupation of the person on whose behalf the memorial is to be registered: Yorkshire Registries Act, 1884, s. 6 (1). In the case of a [Will,] the memorial must be under the hand and seal of one of the [trustees or] executors of the Will [or of some or one or more persons claiming an interest thereunder in some of the lands affected thereby within the riding], and must be attested by one or more witnesses, and must contain: (a) the date of the Will; (b) the date of the death of the testator; (c) the name and description of the residence and occupation of the testator, so far as set out in the Will; (d) the names and descriptions of the residences and occupations of all the witnesses to such Will, so far as appear therein; (e) a description of all the lands affected by the Will within the riding, and the names of all the parishes wherein the same are situate, so far and in such manner as the same are expressed or mentioned in the Will, or to the same effect; (f) the name and description of the residence and occupation of the person on whose behalf the memorial is to be registered: s. 6 (2). It is conceived that after 1925 the words within brackets become immaterial and that the applicants for registration of letters of administration and probates will be the personal representatives or one of them.

Memorials of orders of court, &c.

Regulations are also prescribed for the registration of memorials of orders of a court, or certificates of appointments of trustees in bankruptcy, private Acts of Parliament, awards and orders of the Land Commissioners (now the Ministry of Agriculture and Fisheries), and memoranda of liens or charges: s. 6 (3)-(6), s. 7. Only legal charges will be registered by way of memorial: L. P. Act, 1925, s. 11.

Production of original deed, &c., to Registrar.

No deed or Will can be registered unless the original or one of the originals of the deed, or the probate of the Will, be produced to the Registrar at the time of registration: s. 8.

Certificate of registration.

After the registration of any deed [or Will,] a certificate of such registration is directed to be indorsed on the deed [or Will] or probate, which certificate is receivable in evidence: s. 9.

Rules have been made under the Act for the several ridings containing further regulations and prescribing forms to be used.

No. VIII.

NOTICE *to* PURCHASER *of* FORFEITURE *of* DEPOSIT *and of* RESCISSION *of* CONTRACT.(*m*)

To C. D., of, &c. (*the Purchaser*), and all others whom it may concern : WHEREAS:—

Memorandum of Agreement

(1) By an Agreement, dated, &c., and made between A. B., of, &c. (hereinafter called the Vendor), of the one part, and the said C. D. (hereinafter called the Purchaser), of the other part, the Vendor agreed to sell and the Purchaser agreed to purchase (*parcels, &c.*) and it was also agreed that if the Purchaser should make default in [*set out the special default complained of*], or if the Purchaser should fail to complete the purchase in accordance with that agreement, then the deposit money should, subject to any order of the court to the contrary, at the Vendor's option, be forfeited :

Agreement to forfeit deposit money on default.

Payment of deposit money and acceptance of title.

(2) The Purchaser paid to the Vendor the deposit money agreed to be paid [entered into possession of the property agreed to be purchased] and accepted the title to the property :

Default in payment of purchase-money.

(3) Default was made in payment of the balance of the purchase-money, and on the —— day of ——, 19—, notice (by registered letter) was given to the Purchaser on behalf of the Vendor requiring that [*set out any special default* and that] the balance of the purchase-money should, with the interest thereon, be paid not later than the —— day of —— last (*this date will depend on any special terms of the contract*) and stating that unless the said requirement[s] was [were] duly complied with, and in default of any application to the court by the Purchaser for the return of the said deposit before the last-mentioned date, the same would be forfeited :

Requirements of preliminary notices not complied with.

(4) None of the requirements mentioned in the said preliminary notice have been complied with :

NOW the Vendor hereby declares as follows :—

1. THAT the deposit paid under the recited Agreement is forfeited.

2. THAT the said Agreement is hereby rescinded.

(*m*) A notice to rescind " without prejudice " is void : *Re Weston and Thomas* [1907], 1 Ch. 244 ; 76 L. J. Ch. 179. See the General Conditions of 1925. Under L. P. Act, 1925, s. 49 (2), where the court refuses to grant specific performance of a contract or in any action for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit.

Notice of forfeiture of deposit [and to give up possession of property].

[3. THAT the Purchaser and the persons deriving title under him are hereby required to deliver up to the Vendor the possession of the property comprised in the recited Agreement [or so much thereof as may not have been re-sold with the concurrence of the Vendor].]

DATED this —— day of ——, 19—.

AS WITNESS, &c.

No. IX.

AGREEMENT *by* VENDOR *to pay* DEATH DUTIES *not* (*n*) *overreached by virtue of L. P. Act*, 1925, *s.* 17.

Parties.

AN AGREEMENT made, &c., BETWEEN A. B. (hereinafter called the Vendor), of the one part, and C. D. (hereinafter called the Purchaser), of the other part,

Supplemental to conveyance.

Supplemental to a Conveyance (hereinafter called the Principal Deed), dated, &c., being a Conveyance of certain parts of the —— Estate, in the County of ——:

Agreement to pay duties and for indemnity.

WHEREBY the Vendor (as was agreed on the execution of the Principal Deed) now undertakes that the Vendor or his successors in title [*or* the persons deriving title under him] will duly pay and discharge all estate and other duties payable on the death of his father, the late ——, who died on the —— day of —— (being at his death—*state his interest in the Estate*), and that the Vendor and his representatives will at all times hereafter save harmless and keep indemnified the Purchaser, his estate and effects, and the persons deriving title under him, and all and singular the land and property comprised in the Principal Deed, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said duties or any part thereof or any interest thereon, or in anywise relating thereto,

Cases where the charge is not overreached.

(*n*) This agreement is required where the conveyance is not made for money or money's worth: see definition of "purchaser," L. P. Act, 1925, s. 205 (1) (xxi). It is also required where the charge attached before 1926 and the purchaser has notice of the facts giving rise to the charge (*ib.*, s. 17 (1)), or where a land charge has been registered to protect the charge: *ib.* This Prec. can readily be adapted to meet the case where the vendor obtained the property under a voluntary conveyance which was executed within three years of completion: see Fin. (1909-10) Act, 1910, s. 59. In that case recite the voluntary conveyance and say here "all estate and other duties which may become payable in the event of the death of —— (*the*

and also will on payment of the said duties, or on satisfying the Commissioners of Inland Revenue that they will be paid, forthwith procure and deliver free of expense to the Purchaser or the persons deriving title under him a certificate freeing the land from any charge for duties pursuant to section eleven of the Finance Act, 1894, as extended by sub-section 7 of section sixteen of the Law of Property Act, 1925.(*o*)

AS WITNESS, &c.

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donor) within three years from the date of execution of the recited Voluntary Conveyance."

As regards registered land, see L. R. Act, 1925, s. 73; registered dispositions in favour of a purchaser for money or money's worth take effect free from any charge for duties.

(*o*) As to the liability for payment of death duties, in the absence of express provision, where the charge attaches before 1926, see Fin. Acts, 1894, ss. 8, 9; 1914, ss. 14, 16; 1919, s. 29; also *Re Kidd* [1893], 1 Ch. 695; 62 L. J. Ch. 436; *Re Weston and Thomas* [1907], 1 Ch. 244; 76 L. J. Ch. 179.

Part III.

EXCHANGES, PARTITIONS, EXTINGUISHMENT OF MANORIAL INCIDENTS AND ENLARGEMENT OF TERM DEEDS.

Section I.

EXCHANGES.

Preliminary Note.

At common law.

Exchanges at common law formerly required neither livery of seisin nor a deed, but only the entry of the parties on the land taken by them respectively, and a mutual warranty was implied.

Since the 1st October, 1845, an exchange has been void unless made by deed and implies no condition at law: L. P. Act, 1925, ss. 51, 52, 59, replacing R. P. Act, 1845, ss. 3 and 4. As to the conditions formerly implied, see 4 Cru. Dig. tit. XXXII, c. 6, ss. 1-8; c. 25, s. 20.

How effected.

Exchanges may be effected by one deed executed in duplicate or by two deeds.

S. L. Act.

A tenant for life, or statutory owner can make an exchange with or without the payment of equality money (S. L. Act 1925, ss. 38 (iii) 40); and deal with easements where land is exchanged, unless restrained by order of the court: *Hampden* v. *Earl of Buckingham* [1893], 2 Ch. 531; 62 L. J. Ch 643. Where easements were to be exchanged apart from land, the transaction before 1926 had to be carried out by cross sales (*Re Brotherton* [1908], W. N. 56 (C. A.)); but under s. 38 (iii) this will no longer be necessary or expedient: see *Re Bracken* [1903], 1 Ch. 265; 72 L. J. Ch. 101. As to raising equality money by mortgage of settled land: *ib.*, s. 71 (1) (iii); as to exchanges between the tenant for life and the settled property: *ib.*, s. 68.

Trustees for sale.

Where trustees hold land upon trust for sale, they can exchange, for they are given the statutory powers of a tenant for life: L. P. Act, 1925, s. 28.

Personal representatives.

Personal representatives also have the same powers: Ad. of E. Act, 1925, s. 36. As to Vesting Orders, see T. Act, 1925, s. 44; L. P. Act, 1925, s. 9; Ad. of E. Act, 1925, ss. 38, 43.

Lunatics.

The Lunacy Act, 1890, s. 120 (*b*), authorises the committee of the estate of a lunatic to exchange under an Order in Lunacy. See also S. L. Act, 1925, s. 28.

Ecclesiastical property.

The Tithes Acts, 1842, 1846 and 1860, contain provisions enabling the exchange of glebe lands. See also S. L. Act, 1925, s. 29.

Stamps.

Whether an exchange is effected by one deed executed in duplicate or by two deeds, the stamp on each deed, if no money or a less sum than £100 is paid for equality of exchange, is 10*s*.

If a sum exceeding £100 is paid for equality of exchange, the stamp on the principal or only deed will be the same as on a conveyance on sale for the consideration, and that duty only. If there is more than one deed, the other deed or deeds will have a 10*s*. stamp: Stamp Act, 1891, s. 73, and Schedule

under heading "Exchange or Excambion." If the equality money exceeds £100 and does not exceed £500, the duty is 10*s.* per cent., but if it exceeds £500 the duty is £1 per cent.: Fin. (1909-10) Act, 1910, s. 73. Where the equality money is between £100 and £500, Form No. 11, Sect. III, of Miscellaneous Forms in Conveyances on Sale, p. 483, *supra*, should be used.

Exchanges under the General Inclosure Acts.

By whom application for exchange may be made.

An application for an order of exchange under these Acts may be made to the Ministry of Agriculture and Fisheries by the following persons, namely:

(1) The person in the actual possession or enjoyment, or receipt of the rents and profits, of any such land, except a tenant for life or for years holding under a lease or any agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises shall have been reserved, and except any tenant for years holding under any lease or agreement for a lease, for a term which has not exceeded fourteen years from the commencement thereof, and except any tenant from year to year, or at will or sufferance;

(2) Where the land, &c., has been leased, or agreed to be leased, to any person for life (then the leases are converted into terms of ninety years terminable by notice: L. P. Act, 1925, s. 149 (6)), or for years by a lease or agreement on which a rent of not less than two-thirds of the clear yearly value of the premises shall have been reserved, or where the land, &c., shall be in the possession of a tenant from year to year, or at will or on sufferance, or shall have been leased or agreed to be leased for a term which shall not have exceeded fourteen years from the commencement thereof, then the person for the time being entitled to the land, &c., in reversion immediately expectant on the term created or agreed to be created by the lease or agreement for a lease, or subject to the tenancy from year to year or at will or on sufferance;

(3) Where the land, &c., has been leased, or agreed to be leased, to any person for life (converted into terminable terms, see *supra*) or years by any lease or agreement for a lease on which a rent of less than two-thirds of the clear yearly value shall have been reserved, and of which the term shall have exceeded fourteen years from the commencement thereof, the person for the time being in the actual receipt of the rent reserved upon such lease or agreement for a lease jointly with the person liable to the payment of the rent; and

(4) Where any person shall be in possession or enjoyment, or receipt of the rents and profits of the land, &c., under any writ of execution, or as a receiver under any order of any court of equity, the person who but for such writ or order would have been in such possession, &c., jointly with the person in possession, &c., by virtue of such writ or order: Inclosure Act, 1845 (8 & 9 Vict. c. 118), ss. 16, 147; Inclosure Act, 1848 (11 & 12 Vict. c. 99), s. 13.

Notices and advertisements before making order.

Before the order is confirmed, notice has to be given by advertisement in two successive weeks, and one month must have elapsed from the publication of the last of such advertisements, during which month any person entitled to any estate in, or charge on, the land may give notice of dissent, and the exchange will not be confirmed unless the dissent is withdrawn: Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 150; Commons Act, 1899.

Obsolete Provisions as to Partitions.

Provisions as to exchanges extended to partitions.

The above provisions as to exchanges were extended to partitions; but on an application for a partition, a lessee, being a person jointly interested, had not to concur, and the provision as to notice of dissent did not apply where the application for a partition was made by two-thirds in value of the persons interested in the subject-matter of the partition: Inclosure Act, 1848 (11 & 12 Vict. c. 99), s. 13; Inclosure Act, 1859 (22 & 23 Vict. c. 43), ss. 10, 11. The

application had to be made by persons interested in the land: *Jacomb* v. *Turner* [1892], 1 Q. B. 47. These provisions become obsolete after 1925: L. P. Act, 1925, 1st Sch., Pt. IV.

Exchanges under the Inclosure Acts (continued).

Mines may be excepted.

Exchanges may be made with an exception and reservation of mines and minerals and rights and easements for working them: Inclosure Act, 1847 s. 4, (10 & 11 Vict. c. 111); and see as to inclosure awards in respect of commons: *Thomson* v. *St. Catharine's College* [1919], A. C. 468; 88 L. J. K. B. 163; *Welldon* v. *Butterley Co.* [1920], 1 Ch. 130; 88 L. J. Ch. 496.

Exchanges of easements, &c.

Exchanges may be made of rights of common, rights of fishing, manorial and other rights, and all easements over any land, and all quit rents, chief rents, heriots, tithes and rentcharges for any other of such easements, rights and things, and whether the same or a like or different nature, or for land: Inclosure Act, 1849 (12 & 13 Vict. c. 83), s. 7.

Application may be made by two-thirds in value of persons interested.

Where two or more persons are interested jointly, severally, as a class or in common, the application of two-thirds in value of the persons so interested will be deemed the application of all persons interested: *ib.*

Any person interested in several subject-matters of exchange held under separate titles, or for distinct and separate interests, or subject to separate charges or incumbrances, may effect exchanges of such several subject-matters of exchange in such and the same manner as if different persons had been interested therein: *ib.*, s. 11.

Termor, when may apply.

Where any land has been leased for a term which shall have exceeded one hundred years from the commencement thereof, and it is shown to the satisfaction of the Minister that no rent or acknowledgment has been paid or given for twenty years, or that the person entitled to the rent reserved upon such lease cannot upon reasonable inquiry be ascertained, the person in the actual possession of the land or in the actual receipt of the rents and profits as owner of such term is to be deemed the person interested within the meaning of the Acts: Inclosure Act, 1854 (17 & 18 Vict. c. 97), s. 4.

Person in possession under agreement.

Orders may be made on the application of parties in possession under any agreement for an exchange: *ib.*, s. 5.

Railway companies.

Railway and other public companies are persons interested within the meaning of the Acts: Inclosure Act, 1857 (20 & 21 Vict. c. 31), s. 4.

Inequality of value, how compensated.

On exchanges inequality of value may be compensated by a perpetual rentcharge, where the deficiency in value does not exceed one eighth part of the whole value: *ib.*, ss. 6, 7, 8.

Land taken in exchange goes on the same trusts as land given in exchange.

Lands taken upon any exchange under the Acts enured to the same uses, and subject to the same conditions, charges and incumbrances, as the land given in exchange would have stood limited or been subject to if the order for exchange had not been made: Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 147; Inclosure Act, 1848 (11 & 12 Vict. c. 99), s. 13. But the provisions of any statute requiring land to be conveyed to uses take effect as directions that the land shall (subject to creating or reserving thereout any authorised legal estate which may be required) be conveyed to a person of full age upon the requisite trusts: L. P. Act, 1925, s. 1 (9).

No investigation of title necessary.

On an exchange under the General Inclosure Acts an investigation of title is unnecessary, because each party will hold the lands taken by him by the same title as that by which he held before the land given by him. The decision of the Minister with respect to encroachments is final: *Blackett* v. *Ridout* [1915], 2 K. B. 415; 84 L. J. K. B. 1535.

Power for executors to concur in a partition.

Before 1926 executors might concur in a partition: *Re Kemnal & Still* [1923], 1 Ch. 293, 92 L. J. Ch. 298; independently of their new powers.

Registered land.

If the title to either or both of the properties is registered, L. R. R., 1925, r. 137, applies and no instrument of transfer is required.

No. I.

AGREEMENT *for an* EXCHANGE. (*Equitable Interest.*)

AN AGREEMENT, made the —— day of ——, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part: WHEREBY it is agreed as follows:— Parties.

1. THE said A. B., being seised (*a*) or claiming to be seised in fee simple of [*or* having power under the Settled Land Act, 1925, to exchange] the property mentioned in the First Schedule hereto, and the said C. D., being seised or claiming to be seised in fee simple of [*or* having power, &c.] the property mentioned in the Second Schedule hereto, hereby agree to exchange the same [and the said C. D. agrees to pay to the said A. B. [*or* to the Settled Land Act trustees of A. B.] the sum of £—— by way of equality of exchange]. Parties agree to exchange.

2. THE exchange shall be completed [and the said sum of £—— for equality of exchange shall be paid (*b*)] on the —— day of —— next, and from that day each party shall be entitled to the possession or receipt of the rents and profits of the property to be taken by him, the outgoings up to that time being cleared by the present owner [and if from any cause whatever the exchange shall not be completed on that day the said C. D. shall pay interest on the said sum of £—— at the rate of £5 10*s.* per cent. per annum from that day until the completion of the exchange]. Completion of exchange.

3.—(1) THE title to the lands mentioned in the First Schedule hereto shall commence with, &c. (*or if so* is registered as absolute [*or* good leasehold] under the Land Registration Act, 1925). Title.

[(2) *Other special conditions, if necessary.*]

4.—(1) THE title to the lands mentioned in the Second Schedule hereto shall commence, &c. (*or if so* is registered *as above*).

[(2) *Other special conditions, if necessary, and not included in the General Conditions of* 1925; *see List of Forms of Special Conditions, p.* 234, *supra.*] General Conditions of 1925 to apply.

Preparation of deed of exchange.

(*a*) Sometimes recitals of the interests claimed by the parties are inserted.

(*b*) Sometimes arrangements are made for allowing the equality money to be left on mortgage. It is assumed that the solicitors acting for the parties have a right to use and refer to the General Conditions of 1925. See cl. 38 and the note prefixed to those conditions. The result of these being adopted throughout the country will be that the advisers on either side will in time know the rights of the parties without having to read the conditions. Licence to use the General Conditions of 1925.

5. SUBJECT to the express provisions hereof, the General Conditions of 1925 shall apply to this agreement.

6.—(1) THE Deed of Exchange shall be prepared by the said A. B., and the engrossment thereof shall be delivered to the solicitors of the said C. D. at least —— days before the date fixed for completion for execution by the said C. D. and all other parties (if any) necessary for conveying the lands to be conveyed by him, and for enabling his solicitors to engross the duplicate, which shall within two days be delivered to the solicitors of the said A. B. for execution by him and all other parties (if any) necessary for conveying the lands to be conveyed by him.

(2) COMPLETION shall be effected by an exchange of the original and duplicate, and the said A. B. shall free of cost produce the original duly stamped, to enable the said C. D. to stamp the duplicate.(*c*)

(3) THE costs of and incidental to the preparation, approval, stamping, and execution of the original and duplicate shall be borne by the parties hereto in equal shares.

(4) THE draft of the said Deed of Exchange for perusal and approval on behalf of the said C. D. and other necessary parties as aforesaid shall be left at the office of his solicitors at least seven days before the delivery of the engrossment [and time shall be of the essence of this clause].

Mutual conveyances on completion.(*d*)

[6A.—ON the day fixed for completion the transaction shall be carried out by mutual conveyances of even date, each conveyance to be prepared by and at the expense of the party to whom the same is made. And each of the parties shall acknowledge the right of the other to production of the conveyance retained by him.]

AS WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of lands to be conveyed by the said A. B.

THE SECOND SCHEDULE.

Particulars of lands to be conveyed by the said C. D.

Denoting stamp.

(*c*) If equality money is paid, the *ad valorem* stamp should be on the deed retained by the person who pays the money. This deed should be the original; a denoting stamp should be placed on the duplicate.

Estate contracts.

An agreement for exchange is an estate contract and can be registered if considered necessary as a land charge against each of the parties.

Cross sales.

(*d*) It has sometimes (*e.g.*, where the recitals were likely to be lengthy) been more convenient to take cross conveyances in place of a deed of exchange.

No. II.

AGREEMENT *for* EXCHANGE *between a* TENANT *for* LIFE *of full age and Statutory Owners during the subsistence of a discretionary trust, including provisions as to* INCUMBRANCES *and* DEATH DUTIES. (*Equitable Interest.*)

AN AGREEMENT made, &c., BETWEEN A.B., of, &c. (hereinafter called the Estate Owner), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Statutory Owners), of the other part : Parties.

1. THIS Agreement is entered into—

(1) By the Estate Owner as tenant for life of the estates known as the —— Estates, situated in the County of ——, under a Vesting Deed, dated, &c., from which it appears that these estates, including the property mentioned in the First Schedule hereto, are vested in the Estate Owner in fee simple Upon the trusts of a Settlement, dated, &c., and that R. & S. (hereinafter called the Trustees) are the present trustees of the Settlement for the purposes of the Settled Land Act, 1925. Agreement to be carried out under S. L. Act.

(2) By the Statutory Owners under a Vesting Assent, dated, &c., from which it appears that the adjoining lands mentioned in the Second Schedule hereto (with other lands), are vested in the Statutory Owners in fee simple Upon the trusts of the Will, dated, &c., and proved on, &c., of V. T., who died on, &c., and that the Statutory Owners are also the trustees of the Settlement created by the said Will for the purposes of the Settled Land Act, 1925.(*e*)

2. THE Estate Owner shall (subject to giving legal effect to incumbrances as hereinafter provided) by a subsidiary Vesting Estate Owner to convey property in First Schedule.

Clause 6A is alternative to clause 6. In the case of an exchange of easements under the S. L. Act where no land is exchanged the transaction can now be effected by an exchange without the aid of cross sales: S. L. Act, 1925, s. 38 (iii). After 1925 a deed of exchange in duplicate will nearly always be preferable to conveyances by way of cross sales. The statutory provisions as to contracts now apply to exchanges as well as to sales: L. P. Act, 1925, ss. 40-45, 47-50, 125. Statutory provisions.

If the title to either or both of the properties is registered the conveyance of the registered land will be by instrument of transfer under rr. 136 and 137 and paras. 6 and 6A will need some verbal alterations. There will be no right to production of a registered transfer, as it will be retained in the registry. Registered land.

(*e*) If the title to either or both of the properties is registered it will suffice to recite that the owner is the registered proprietor, with corresponding verbal alterations in the subsequent paras. Registered land.

Deed, convey to the Statutory Owners in fee simple ALL THOSE, &c., all of which lands are more particularly described in the First Schedule hereto and are delineated on the plan No. 1 hereto, and are thereon edged red, in exchange for the lands mentioned in the Second Schedule hereto and in consideration of the sum of £—— by way of equality for exchange to be paid by the Statutory Owners to the Trustees.

Manner of shifting an incumbrance.

3. THE Estate Owner shall (immediately before the execution of the said subsidiary Vesting Deed to be made pursuant to section ten of the Settled Land Act, 1925) by the direction of the Statutory Owners pursuant to section eighty-two of the said Act execute a charge by way of legal mortgage of the land mentioned in the First Schedule hereto for giving effect to the rights of certain mortgagees of the land mentioned in the Second Schedule hereto (which mortgages are to be discharged) by way of substituted security: but neither the Estate Owner nor his estate and effects shall be made personally liable for the mortgage money or interest.

Statutory Owners to convey property in Second Schedule.

4. THE Statutory Owners (with the concurrence of the said mortgagees unless a separate discharge is taken) shall by a Subsidiary Vesting Deed convey to the Estate Owner in fee simple ALL THOSE lands known as, &c., and more particularly described in the Second Schedule hereto and delineated on the plan No. 2 hereto, and thereon edged blue.

Commencement of titles.

5.—(1) THE abstract of title to the property of the Estate Owner shall commence with a Disentailing Deed, dated &c.

(2) THE abstract of title to the property of the Statutory Owners shall commence with a Voluntary Settlement, dated, &c.

(3) THE prior titles shall not be required, inquired into, or objected to, whether or not the documents relating to the same shall appear to be respectively in the possession of the Estate Owner or the Statutory Owners, and no objection shall be taken on the ground that the said Settlement of —— was originally voluntary, but nothing in this condition shall discharge either party from the obligation to accept any counsel's certificate as to title given at the time of the execution of a vesting instrument (*add any necessary special conditions as to title. See Lists of Special Conditions, p. 234, supra*). [*If either title is registered as absolute or good leasehold, substitute, for the portion of this para. relating to it, a statement of that fact.*]

General Conditions of 1925 to apply.

6. THE General Conditions of 1925 shall apply to this Agreement subject to the express provisions hereof.

7. THE property of the Estate Owner (with other family property) is subject to—

Incumbrances affecting Estate Owner's property and manner in which they are to be dealt with.

(i) Certain family charges and powers of charging which take effect in equity and will be overreached under his statutory powers (*f*) and accordingly will not be abstracted.

(ii) A charge by way of legal mortgage [*or* mortgage by demise] in favour of the —— Society executed under the statutory powers. The said Society shall join to release the lands mentioned in the First Schedule hereto from the principal sum and interest remaining owing to them [and to surrender the mortgage term so far as it relates to the said lands] in consideration of the said equality money which will be paid by the direction of the Trustees and the Estate Owner to the said Society towards reduction of the mortgage money.

(iii) The life interest of the Estate Owner is also incumbered. The incumbrancer has consented or will before completion consent in writing to the said exchange, but as by virtue of the Settled Land Act, 1925, sub-section (5) of section one hundred and four, the Statutory Owners are not concerned to see or inquire whether such consent has been given no abstract relating to the said incumbrance will be furnished.

Incumbrances affecting the Statutory Owners' property and manner in which they are to be dealt with.

8. THE property of the Statutory Owners is, with other lands, subject to the following incumbrances (that is to say) :—

(i) A legal mortgage by demise to certain individuals. These mortgagees shall join to surrender the mortgage term and release the lands mentioned in the Second Schedule hereto from the principal and interest remaining owing.

(ii) Certain instalments of death duties which on the —— day of —— became payable on the death of a former tenant for life under a Settlement prior to the Will hereinbefore mentioned. The charge having arisen before 1926 will not be overreached by the Deed of Exchange, but the Statutory Owners will apply for a certificate under the Law of Property Act, 1925, section sixteen, sub-section (7). If the certificate is not granted the Estate Owner shall make no objection in respect thereof nor

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Compound Settlements.

(*f*) If there is a compound settlement title must be made thereunder (S. L. Act, 1925, s. 1 (1), proviso); that is to say, the trustees of the compound settlement will be the only trustees to whom equality money can be paid. The principle is that the best title available must always be made, and in the best way: L. P. Act, 1925, s. 42. For instance, if a jointure is subsisting under a prior settlement either the land must be released therefrom before completion or trustees of the compound settlement must act so that it will be overreached. The jointress should not concur in the conveyance: *ib.*

require the said duties to be paid before completion, but shall accept a separate undertaking by —— to keep the lands mentioned in the Second Schedule hereto indemnified against all claims in respect of the said duties, and on the payment of the final instalment to produce the proper evidence of the discharge of the said duties.

Completion.

9. THE said exchange, &c. (*as in clause 2 of last Prec., with the necessary variations*).

10. (*As in clause 5 of last prec.*)

Preparation of Deed of Exchange.

11. (1) THE Deed of Exchange, &c. (*as in clause 6 of last Prec., with the necessary variations*).

AS WITNESS, &c. (*Add two Schedules.*)

No. III.

DEED OF EXCHANGE *between absolute owners.*(*g*) (*Legal Estate.*)

Parties.

THIS DEED OF EXCHANGE is made, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part:

Recital of titles and of agreement for exchange.

WHEREAS the said A. B., being seised in fee simple in possession free from incumbrances of the lands mentioned in the First Schedule hereto, and the said C. D., being seised in fee simple in possession free from incumbrances of the lands mentioned in the Second Schedule hereto, have agreed to exchange the same [and the said C. D. has agreed to pay the sum of £—— for equality of exchange]:

NOW THIS DEED WITNESSETH as follows:—

Conveyance of property in First Schedule.

1. (1) IN consideration of the conveyance by the said C. D. hereinafter contained [and of the sum of £—— now paid by the said C. D. to the said A. B. for equality of exchange (the

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(*g*) To be executed in duplicate. No Precedent of an exchange by way of mutual conveyances of even date is given in this edition, as it is no longer recommended. The recitals after 1925 being confined to legal estates, should always be short.

Registered land.

If both properties are registered the exchange will be effected by a transfer in Form No. 44 in the rules, if only one is registered it will probably be best to use the above Precedent coupled (if required by the Registrar) with a transfer in Form No. 19 (which will need no stamp—Rule 94), as to the registered land which will be made—"in consideration of a deed of exchange of even date herewith [and of——pounds (£——) for equality of exchange].

receipt whereof the said A. B. hereby acknowledges)], the said A. B., As Beneficial Owner, hereby conveys unto the said C. D.,

ALL, &c. (*referring to First Schedule*), Parcels.

TO HOLD unto the said C. D. in fee simple. Habendum.

(2) The said A. B., &c. [*acknowledgment as to documents, Form No.* 4, *Sect. III, p.* 480, *if required*].

2. (1) IN consideration of the conveyance by the said A. B. hereinbefore contained, the said C. D., As Beneficial Owner, hereby conveys unto the said A. B., Conveyance of property in Second Schedule.

ALL, &c. (*referring to Second Schedule*), Parcels.

TO HOLD unto the said A. B. in fee simple.

(2) (*Acknowledgment by C. D. as to documents, Form No.* 4, *p.* 480, *supra.*)

[3. *Add certificate as to consideration, Form No.* 8, *p.* 483, *if required.*]

IN WITNESS, &c. (*Add Schedules.*)

No. IV.

DEED OF EXCHANGE *between a* TENANT FOR LIFE *under his statutory powers and an* OWNER IN FEE SIMPLE.(*h*) (*Legal Estate.*)

THIS DEED OF EXCHANGE AND SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Limited Owner), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 2nd part, and X. Y., of, &c. (hereinafter called the Absolute Owner), of the 3rd part: WHEREAS:— Parties.

(1) Under a Vesting Deed (hereinafter called the Principal Deed), dated, &c., the lands mentioned in the First Schedule hereto (with other lands) are now vested in the Limited Owner in fee simple Upon the trusts of a Settlement, dated, &c., and Title of Limited Owner.

(*h*) The S. L. Act, 1925, s. 38 (iii), enables tenants for life and statutory owners to exchange settled land, including an exchange in consideration of money paid for equality of exchange. The equality money, if payable by the trustees, may be raised on mortgage: *ib.*, s. 71. The deed must be executed in duplicate.

Exchanges will be made by trustees for sale and by personal representatives in the like circumstances as they are authorised to execute conveyances on sale, see *supra* for the Precedents relating thereto which can be readily converted into deeds of exchange. Trustees of personal representatives.

If the title to either or both of the properties is registered, see the Note to the preceding Precedent. Registered land.

as appears from the Principal Deed [or endorsements thereon] the Trustees are the present trustees of the Settlement for the purposes of the Settled Land Act, 1925, and the Limited Owner during his life has power to appoint new trustees of the Settlement :

Seisin of Absolute Owner.

(2) The Absolute Owner is seised in fee simple in possession free from incumbrances of the lands mentioned in the Second Schedule hereto :

Agreement for exchange.

(3) The Limited Owner and the Absolute Owner have agreed that such exchange shall be made as is hereinafter expressed, and that the Absolute Owner shall pay the sum of £—— for equality of exchange to the Trustees as such trustees as aforesaid :

NOW THIS DEED WITNESSETH as follows :—

Limited Owner conveys property in First Schedule.

1. In pursuance of the said agreement and in consideration of the conveyance by the Absolute Owner hereinafter contained, and of the sum of £—— now paid by the Absolute Owner by the direction of the Limited Owner to the Trustees as such trustees as aforesaid (the receipt whereof they hereby acknowledge), the Limited Owner, in exercise of the powers for this purpose conferred on him by the Settled Land Act, 1925, and of all other powers (if any) him enabling, and As Trustee, hereby conveys unto the Absolute Owner,

Parcels.

All, &c. (*referring to First Schedule*),

Habendum.

To hold unto the Absolute Owner in fee simple, discharged as provided by section seventy-two of the Settled Land Act, 1925, the premises hereinbefore conveyed to be in exchange for the lands hereinafter conveyed.

2. (*Acknowledgment by Limited Owner as to documents, including the Vesting Deed and Counsel's Certificate, if any, Form No.* 4, *Sec. III, p.* 480, *supra.*)

Conveyance of land in Second Schedule.

3. In further pursuance of the said agreement and in consideration of the conveyance by the Limited Owner hereinbefore contained, the Absolute Owner, As Beneficial Owner, hereby conveys unto the Limited Owner,

Parcels.

All, &c. (*referring to Second Schedule*),

Habendum.

To hold unto the Limited Owner in fee simple Upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the lands therein comprised, and so that the premises conveyed by this clause shall be in exchange for the lands conveyed by clause 1 hereof.

4. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925. S. L. A. trustees.

5. THE power of appointing a new trustee or new trustees of the Settlement is vested in the Limited Owner during his life. Power to appoint.

[6. *Acknowledgment, &c., by Absolute Owner to Limited Owner as to documents, Form No.* 4, *Sec. III, p.* 480, *if required.*]

(*Add certificate as to value, if required.*)

IN WITNESS, &c. [*Add two Schedules.*]

SECTION II.

PARTITIONS BEFORE 1926.

PRELIMINARY NOTE.

A PARTITION was where two or more persons, seised or possessed of the same land as joint tenants, co-parceners, or tenants in common, agreed to divide the land between them in severalty, each taking a distinct part. Partition at common law.

At common law, a warranty of title was incident to a partition as well as to an exchange. Since the 1st October, 1845, a partition was void unless made by deed, and implied no condition at law: R. P. Act, 1845, ss. 3, 4, replaced by L. P. Act, 1925, ss. 51, 52, 59. Partitions implied no warranty.

The S. L. Acts formerly gave full powers for a tenant for life and limited owners to carry out partitions; these provisions have been repealed and have not been replaced, for after 1925 there will be no land held in undivided shares. The entirety will be subject to a trust for sale: L. P. Act, 1925, 1st Sch., Pt. IV. There is however one exception, if there is a subsisting contract for sale on 1st January, 1926, binding all the shares, effect can be given thereto under the old law (*ib.*, paragraph 1 (10)); similarly a partition action then pending can be carried out by order of the court: *ib.* paragraph 1 (11). If there is a subsisting contract for partition effect must be given thereto by the trustees for sale in whom the entirety vests. Partitions under S. L. Acts, 1882 to 1890. Contracts and actions pending on 1st January, 1926.

A power of sale and exchange before 1926 authorised trustees to effect a partition (*Re Frith and Osborne* (1876), 3 Ch. D. 618; 45 L. J. Ch. 780); but a mere power to sell did not: Lewin, 12th ed., 505. Personal representatives had power to concur in partitions: *Re Kemnal and Still* [1923], 1 Ch. 293; 92 L. J. Ch. 298. Trustees.

The Lunacy Act, 1890, s. 120 (*b*), authorised the committee of the estate of a lunatic to effect a partition under an Order in Lunacy. Lunatics.

Before 1926 a partition might be ordered by the Chancery Division in an action instituted by one or more of the persons interested; where, in the opinion of the court, a sale would be more beneficial than a division, the court might, on the request of any of the parties, direct a sale, see 31 Hen. 8, c. 1; 32 Hen. 8, c. 32; and Partition Acts, 1868 and 1876 (all repealed save as to pending actions); also *Mason* v. *Keays* [1898], 78 L. T. 33. The order for sale operated as a conversion of the share of a person *sui juris* as from the date of the order: *Re Dodson* [1908], 2 Ch. 638; 77 L. J. Ch. 830; *Fauntleroy* v. *Beebe* [1911], 2 Ch. 257; 80 L. J. Ch. 654; *Herbert* v. *H.* [1912], 2 Ch. 268; 81 L. J. Ch. 733; *cf.* the case of an infant: *Hopkinson* v. *Richardson* [1913], 1 Ch. 284 3. A part owner of land who was not either a coparcener, or a tenant in common, or a joint tenant, was not entitled to a partition. Where land was subject to an overriding term, limited upon trusts for management which required the possession of the Partition by the court.

entirety to remain in the trustees there was no right to a partition during the continuance of those trusts so as to prejudice the term: *Dodd* v. *Cattell* [1914], 2 Ch. 1; 83 L. J. Ch. 721; *semble*, there could be no objection to a partition subject and without prejudice to the term.

In what cases money expended by one of several joint owners could be charged against entirety.

Formerly if a joint tenant or tenant in common voluntarily expended money in repairs or improvements of the property, he had no remedy against his co-tenant for contribution, so long as the property was held in common. But, if an action for partition was instituted, and it appeared that the value had been increased by the expenditure one party could not take the increase in value without making an allowance for what had been expended in producing that increase: *Kenrick* v. *Mountsteven* [1899], 48 W. R. 141. Where property was sold by a paramount mortgagee, the surplus proceeds of sale were dealt with in a similar manner between the tenants in common of the equity of redemption, one of whom had spent money in improvements: *Leigh* v. *Dickeson* (1884), 15 Q. B. D. 60; 54 L. J. Q. B. 18; *Re Jones* [1893], 2 Ch. 461; 62 L. J. Ch. 996; *Re Cook's Mortgage* [1896], 1 Ch. 923; 65 L. J. Ch. 654. If a joint tenant, who has spent money in improvements, dies, his representatives have a lien in equity against the survivor: *Lake* v. *Gibson* (1729), 1 Eq. Ca. Abr. 294, pl. 3. This appears to stand good after 1925.

PARTITIONS AFTER 1925.

Subject only to giving effect to contracts made before 1926, and to the power for the court to carry through a partition action actually pending, there can be no partition, properly so called, after 1925; accordingly no Precedents of agreements for partition are inserted in this edition.

Powers of trustees for sale.

On the other hand, where the net proceeds of sale (capable of arising under a trust for sale of land) have become absolutely vested in persons of full age in undivided shares, whether or not such shares may be subject to a derivative trust, the trustees for sale may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents until sale, partition the land remaining unsold and provide for the payment of any equality money: L. P. Act, 1925, s. 28. But a purchaser is not concerned to see whether any such consent has been given: *ib.* Consent may be given on behalf of a lunatic by the committee or receiver. If a share is vested in an infant the trustees may act on his behalf and retain land, to be held on trust for sale, or other property to represent his share; the power to partition then applies as if the infant had been of full age: *ib.*, sub-s. 4. The trustees can provide for payment of equality money, by way of mortgage or otherwise: *ib.*, sub-s. 3 (*b*). The partition having been arranged, the trustees can (sub-s. 3) convey the land in severalty, subject or not to any legal mortgage for raising equality money:—

(1) To persons of full age absolutely;
(2) To persons of full age on trust for sale;
(3) To tenants for life or statutory owners, by a vesting deed;
(4) Partly in one of the above ways and partly in another.

Consents.

If the disposition on trust for sale makes the consent of more than two persons requisite to the execution of the trust for sale, then in favour of a purchaser the consent of any two or them to the execution of a statutory or other power is sufficient: s. 26.

Powers of the court.

If the trustees refuse to exercise the powers of partition, or any requisite consent cannot be obtained, the court can make a vesting or other order or direct the trustees to give effect to the transaction: s. 30.

Power to value.

Under T. Act, 1925, s. 22 (3), the trustees may for the purpose of giving effect to the provisions of any statute by duly qualified agents ascertain and fix the value of the trust property.

Under Ad. of E. Act, 1925, s. 39, personal representatives have all the powers of trustees for sale, hence they can exercise the above power to partition; the section applies whether the testator or intestate died before or after 1926; further powers of appropriation are conferred: *ib.*, s. 41. In favour of a purchaser an appropriation of real estate is deemed to have been made after all requisite consents, if any, had been given: *ib.*, sub-s. 7. Powers of personal representatives.

In this edition no Precedents of partition deeds between co-owners are given, for after 1925 the entirety of the land will be vested in trustees for sale: L. P. Act, 1925, 1st Sch., Pt. IV. The points to note, however, are— No partition deeds after 1925.

(1) If a contract for sale of land held in undivided shares is in force on 1st January, 1926, and is completed in due course, title can be made to the land by the co-owners as if the new Acts had not been passed: *ib.*, para. 1 (10), and see Prec. of Conveyances on Sale, *supra*. Contracts for sale.

(2) If an action for partition (it is conceived that an action for sale in lieu of a partition being instituted under the Partition Acts is on the same footing) is pending on 1st January, 1926, and an order for sale or partition is made thereunder, it can be carried out independently of the new law: *ib.*, para. 1 (10) (11). Pending actions.

But the court can order a stay of the proceedings, in which case the new law will apply; or the court may appoint trustees of the land, in which case the entirety will vest in them on trust for sale (*ib.*), and they will thereafter make title as ordinary trustees for sale, though the order will be recited in any conveyance on sale.

(3) If a contract for partition is pending on 1st January, 1926, the vesting provisions do not apply to transfer the land in severalty to the persons equitably entitled under the contract; a conveyance remains to be made (*ib.*), 1st Sch., Pt. II, para. 7 (*j*); but the entirety will vest under Pt. IV in trustees for sale, who will be bound to execute the requisite conveyance for giving effect to the contract: Interp. Act, 1889, s. 38. Pending contract for partition.

CONVEYANCES BY WAY OF PARTITION (PRECEDENTS).

No. I.

CONVEYANCE *for giving effect to a* CONTRACT *for* PARTITION *made before* 1926. (*Legal Estate.*)

THIS VESTING DEED is made, &c., BETWEEN A. T., of, &c., and B. T., of, &c. (hereinafter called the Principal Trustees), of the 1st part, X., of, &c. (*formerly tenant for life of one moiety*), of the 2nd part, C. T., of, &c., and D. T., of, &c. (hereinafter called the X. Trustees), of the 3rd part, and Y., of, &c. (*formerly tenant for life of the other moiety*), of the 4th part: WHEREAS:— Parties.

(1) At the date of the Contract for Partition hereinafter mentioned the freehold properties described in the First and Second Schedules hereto stood limited (with certain capital money and investments now represented with any accumulations made under the trusts of the term hereinafter mentioned by the money and investments mentioned in the Third Schedule hereto) under the Will, dated, &c., and proved, &c., of L. S. (hereinafter called the Testator), who died, &c., and by Term for discharging incumbrances.

virtue of divers appointments of new Trustees thereof To the use of the Principal Trustees for a term of 500 years from the death of the Testator without impeachment of waste on trusts (so far as the same were subsisting or capable of being enforced) for entering into possession of the land or the rents and profits thereof, and by means of such rents and profits or by accumulations thereof or otherwise as therein mentioned to discharge the incumbrances mentioned in the Fourth Schedule hereto and affecting the said freehold properties or parts thereof,(*a*) and subject thereto as to one moiety (hereinafter called the X. moiety) To the use of the said X. during his life with divers remainders over; and as to the other moiety (hereinafter called the Y. moiety) To the use of the said Y. during his life with divers remainders over: And by virtue of a power of sale contained in the said Will the Principal Trustees were the trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890:

Title to the X. moiety.

(2) By virtue of a Disentailing Assurance, dated, &c., and a Re-settlement, dated, &c., at the date of the said Contract for Partition the X. moiety stood limited (subject so far as affected thereby to the said term of 500 years and the trusts thereof) To uses under which R. X. was to receive a yearly rentcharge during the joint lives of himself, and the said X. and subject thereto To the use of the said X. during his life in restoration and in continuation of his life estate under the said Will with divers remainders over And it was thereby declared that so long as the said term of 500 years or the life interest of the said X. should remain subsisting the Principal Trustees or other the trustees for the time being of the said Will should be the trustees of any compound settlement consisting of the said Will, Disentailing Assurance and Re-settlement for the purposes of the Settled Land Acts, 1882 to 1890, but that the X. Trustees should be the trustees of the said Re-settlement for the purposes of the said Acts: And certain additional powers were thereby conferred for facilitating partitions and for shifting incumbrances in connexion with any partition:

The Y. moiety not dealt with.

(3) At the date of the said Contract for Partition the Y. moiety had not been dealt with, and accordingly the said Y. was tenant for life thereof under the recited Will:

Effect of incumbrances, or trust for accumulation.

(*a*) A tenant for life remains such notwithstanding that by the settlement the settled land is incumbered in any manner or to any extent: S. L. Act, 1925, s. 19 (4); see also s. 20 (1) (vi) (vii).

(4) At the date of the said Contract for Partition the aggregate sum of £—— and no more was owing on the security of the incumbrances mentioned in the Fourth Schedule hereto with the current interest thereon : Amount of incumbrances.

(5) By an Agreement, dated, &c., 1925, and made between the said X. of the one part, and the said Y. of the other part (due notice whereof had been given to the Principal Trustees), it was agreed, first, that the property mentioned in the First Schedule hereto should with one moiety of the capital money and investments (including any accumulations of income made under the trusts of the said term of 500 years) subject to the trusts of the said Will, be taken in severalty by the said X. and his successors in title in satisfaction of the X. moiety but subject to one moiety of the said aggregate mortgage debt of £——, or of so much thereof as should remain owing at the date of completion in exoneration of the other moiety of the said debt and the interest thereon ; secondly, that the property mentioned in the Second Schedule hereto should with the other moiety of the said capital money and investments (including as aforesaid) be taken in severalty by the said Y. and his successors in title in satisfaction of the Y. moiety but subject to one moiety of the said aggregate mortgage debt of £—— or of so much thereof as should remain owing at the date of completion in exoneration of the other moiety of the said debt and the interest thereon ; thirdly, that the said partition should be completed by a Deed of Partition under the Settled Land Acts, 1882 to 1890, on the —— day of —— 1925, all necessary apportionments of capital and income being made up to that date and so that separate accounts of capital money and investments should be kept from that date ; fourthly, that either before or after the completion of the said partition all necessary arrangements should be made with such of the incumbrancers as would consent to shift the securities in such a manner as eventually to leave the property mentioned in the First Schedule hereto subject to one set of incumbrances and to leave the property mentioned in the Second Schedule hereto subject to another set of incumbrances : provided that each property should bear one moiety of the aggregate amount of the incumbrances as aforesaid ; fifthly, that if and so far as the said arrangement could not be effected by reason of the refusal of the incumbrancers or otherwise effect should be given thereto by means of exchanges (with or without payment of equality money) or by the whole or partial discharge of incumbrances, Contract for partition.

or by any other reasonable means provided that the respective beneficial interests under the said partition of the said X. and his successors in title on the one hand and the said Y. and his successors in title on the other hand should not be prejudicially affected:

Effect of Law of Property Act, 1925.

(6) The said partition had not been completed on the 1st day of January, 1926, and accordingly by virtue of the First Schedule to the Law of Property Act, 1925, the entirety of the properties mentioned in the First and Second Schedules hereto became vested (*b*) in the Principal Trustees in fee simple on the statutory trusts subject to the liability to execute a conveyance or vesting deed for giving effect to the recited contract but subject to the incumbrances (converted into mortgages by demise) mentioned in the Fourth Schedule hereto:

Request to execute vesting deed.

(7) The said X. and Y. have requested the Principal Trustees to execute such vesting deed for the purpose of giving effect to the recited contract in accordance with paragraph 7 (*j*) of Part II of the First Schedule to the Law of Property Act, 1925, which they have agreed to do in manner hereinafter appearing:

NOW for giving effect to the said Contract and pursuant to the Law of Property Act, 1925, and the Settled Land Act, 1925, THIS DEED WITNESSETH as follows:—

Conveyance of lands, &c., in First Schedule.

1. THE Principal Trustees, As Trustees, hereby convey and the said Y., As Trustee, hereby conveys and confirms unto the said X.,

ALL AND SINGULAR the lands, perpetual rentcharges and other property described in the First Schedule hereto,

TO HOLD unto the said X. in fee simple subject to and charged with the payment of one moiety of the said aggregate mortgage debt of £— and of the interest owing and to become owing in respect of that moiety in exoneration of the lands and other property mentioned in the Second Schedule hereto but in other respects without prejudice to the rights of the incumbrancers mentioned in the Third Schedule hereto.

Trusts of the property in First Schedule.

2. THE said X. shall stand possessed of the premises UPON TRUST for the Principal Trustees (*c*) for the residue of the said

(*b*) As the life estate had been restored there was, for purposes of title, only one settlement, namely, the Will, hence 1st Sch., Pt. IV, para. 1 (3), applied and the land did not vest in the Public Trustee under para. 1 (4).

(*c*) The trustees are not entitled to reserve a legal term to themselves: S. L. Act, 1925, 2nd Sch., para. 1 (6). It is assumed that the tenants for life have no power to appoint new trustees of the Will. If they have this should be mentioned before the additional powers are set out: *ib.*, 1st Sch., Form No. 1.

term of 500 years limited by the recited Will without impeachment of waste (so far as the same may be subsisting) and subject to the said term and the trusts thereof (so far as enforceable) Upon the trusts and subject to the powers and provisions formerly affecting the X. moiety upon and subject to which under the recited Will, Disentailing Assurance and Re-settlement or otherwise the same ought to be held from time to time as forming part of the property representing the X. moiety.

S. L. Act trustees.

3. THE Principal Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

[3. *If the life interest had not been restored and the limitations and powers of the Will had been wholly spent this clause would have read as follows :—*

The X. trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.]

Additional powers.

4. THE following additional or larger powers are conferred by the said settlement in relation to the settled land and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life :

(1) Those conferred by the said Will are as follows :—[*set them out.*]

(2) Those conferred by the said Re-settlement are as follows :—[*set them out.*]

Conveyance of lands, &c., in Second Schedule.

5. THE Principal Trustees, As Trustees, hereby convey and the said X., As Trustee, hereby conveys and confirms unto the said Y.,

ALL AND SINGULAR the lands perpetual rentcharges and other property mentioned in the Second Schedule hereto,

TO HOLD unto the said Y. in fee simple subject to and charged with the payment of one moiety of the said aggregate mortgage debt of £— and of the interest owing and to become owing in respect of that moiety in exoneration of the lands and other property mentioned in the First Schedule hereto but in other respects without prejudice to the rights of the incumbrancers mentioned in the Third Schedule hereto.

Trusts of the property in Second Schedule.

6. THE said Y. shall stand possessed of the premises UPON TRUST for the Principal Trustees for the residue of the said term of 500 years limited by the recited Will without impeachment for waste (so far as the same may be subsisting) and subject to the said term and the trusts thereof (so far as enforceable) Upon the trusts and subject to the powers and provisions formerly affecting the Y. moiety upon and subject to which under the

recited Will or otherwise the same ought to be held from time to time as forming part of the property representing the Y. moiety.

S. L. Act trustees.

7. [*Same as clause* 3, *supra*.]

Additional powers.

8. THE additional powers affecting the property described in the Second Schedule hereto are those mentioned in sub-clause 2 of clause 4 aforesaid.

Capital money and investments in Third Schedule.

9. (1) THE capital money and investments mentioned in the first part of the Third Schedule hereto shall be held by the Principal Trustees as if the same had arisen from the property mentioned in the First Schedule hereto.

(2) THE capital money and investments mentioned in the second part of the Third Schedule hereto shall be held by the Principal Trustees as if the same had arisen from the property mentioned in the Second Schedule hereto.

Incumbrances in Fourth Schedule.

10.—(1) THE incumbrances mentioned in the first part of the Fourth Schedule hereto only affect the property mentioned in the First Schedule hereto and shall remain exclusively charged thereon in exoneration of the property mentioned in the Second Schedule hereto.

(2) THE incumbrances mentioned in the second part of that Schedule only affect the property mentioned in the Second Schedule hereto and shall remain exclusively charged thereon in exoneration of the property mentioned in the First Schedule hereto.

(3) THE incumbrances mentioned in the third part of the Fourth Schedule hereto affect the properties mentioned in the First and Second Schedules hereto and shall (until discharged or arrangements are made for shifting the same in accordance with the recited contract) be borne by those properties in such shares as may be requisite for securing that each of the said properties shall bear one moiety of the said aggregate mortgage debt of £——.

Acknowledgment.

11.—(1) THE Principal Trustees hereby acknowledge the right of the said X. and Y. and each of them to production of the Appointments of New Trustees and other documents mentioned (*d*) in the Fifth Schedule hereto which relate to the properties mentioned in the First and Second Schedules hereto.

(2) AFTER the trusts of the said Will have been wound up the documents relating to both properties shall be delivered to the said X. or his successors in title subject to giving to the said Y.

Deeds.

(*d*) The tenants for life are entitled to the deeds except those relating to securities for capital money (S. L. Act, 1925, s. 98 (3)); but in this case those relating to both properties can be conveniently retained by the trustees till the Will trust is wound up.

or his successors in title the usual statutory acknowledgment if so required.

[12. *Add certificate as to value if equality money given is less than* £500.]

IN WITNESS, &c. [*Add five Schedules.*](*e*)

No. II.

CONVEYANCE *by* TRUSTEES *for* SALE *to give effect to a* PARTITION *made by them in favour of an* ABSOLUTE OWNER.(*f*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. T., of, &c., and B. T., of, &c. (hereinafter called the Trustees), of the one part, and P. R., of, &c. (hereinafter called the Grantee), of the other part: WHEREAS:—

Conveyance on trust for sale.

(1) Under a Conveyance, dated, &c., and made between X. R., of the 1st part, J. L., Spinster (afterwards and hereinafter called J. R.), of the 2nd part and C. T. and E. T.(hereinafter called the Original Trustees) of the 3rd part (being a conveyance made in consideration of the marriage shortly afterwards solemnised between the said X. R. and J. R.), of the property described in the First Schedule hereto with other property to the Original Trustees in fee simple on trust for sale with the consent of the said X. R., who died, &c., and of the said J. R., who died, &c., or of the survivor of them and afterwards at the discretion of the Trustees for the time being thereof who were directed to stand possessed of the net proceeds of sale on the trusts therein referred to And by virtue of the Appointments of New Trustees mentioned in the Second Schedule hereto the said property became vested in the Trustees in fee simple on trust for sale as aforesaid:

[Variation for a Will.]

[*Or* (1) Under the Will, dated, &c., and proved, &c., of X. R., who died, &c., and an Assent, dated, &c., under the hands of the executors of the said Will (being an Assent on trust for sale of the property mentioned in the First Schedule hereto with other property) and by virtue of the Appointments of New Trustees of the said Assent mentioned in the Second Schedule hereto the said property became vested in the Trustees on trust for sale:]

(*e*) To be executed in duplicate.

Registered land.

If the property is registered the partition will be effected by instruments of transfer, without any recitals, amalgamating Form No. 20 with Forms 21, 22 and 24 as may be appropriate to the case. See also Rules 99, *et seq.*

(*f*) See Preliminary Note to this group. If a legal charge has been created for equality this must be mentioned and referred to in the habendum.

Allotment.

(2) In exercise of the powers for this purpose conferred by sub-section (3) of section twenty-eight of the Law of Property Act, 1925, the Trustees have allotted the property mentioned in the First Schedule hereto to the Grantee [all necessary consents to the exercise of the said power having been separately given] in or towards satisfaction of his share or interest in the said proceeds of sale:

Request to convey.

(3) For giving effect to the said allotment or partition the Grantee has requested the trustees to execute such conveyance as is hereinafter contained:

NOW in exercise of the power conferred by section twenty-eight of the said Act THIS DEED WITNESSETH as follows:—

Conveyance.

1. THE Trustees, as Trustees, hereby convey unto the Grantee ALL &c. (*referring to First Schedule*),

TO HOLD unto the Grantee in fee simple discharged from the trusts aforesaid.

Acknowledgment.

2. THE Trustees hereby acknowledge the right of the Grantee to production of the documents mentioned in the Second Schedule hereto and to delivery of copies thereof.

IN WITNESS, &c. [*Add two Schedules.*](*g*)

No. III.

CONVEYANCE *by* TRUSTEES *for* SALE *to give effect to a* PARTITION *made by them in favour of* TRUSTEES *for* SALE.(*h*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. T., of, &c., and B. T., of, &c. (hereinafter called the Trustees), of the one part and P. R., of, &c., and S. Q., of, &c. (hereinafter called the Grantees), of the other part: WHEREAS:—

(1) [*Recite Conveyance on trust for sale or Will followed by Assent on trust for sale as in last Prec.*]

Will of one of persons interested in proceeds of sale.

(2) D. R. (one of the persons absolutely interested in the proceeds of sale under the trust aforesaid) duly made his Will, dated, &c., and thereby devised and bequeathed his real and personal estate (including his share in the said proceeds of sale) to the Grantees upon trust to sell the same and stand possessed of the

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Registered land.

(*g*) If the land is registered the conveyance will be effected by a transfer in Form No. 19 in the Rules without recitals. If there are restrictions on the register they must be complied with.

(*h*) See Preliminary Note.

net proceeds of sale on the trusts therein mentioned and thereby appointed the Grantees to be his executors:

(3) The said D. R., died, &c., without having revoked or altered his said Will which was on, &c., duly proved by the Grantees at the —— Probate Registry: Death and probate.

(4) [*As in clause 2 of last Prec., saying* "Grantees" *instead of Grantee and at the end* "in or towards satisfaction of the share of the said D. R. deceased in the said proceeds of sale"]: Allotment.

(5) [*As in clause 3 of last Prec., saying* "Grantees" *for Grantee*]: Request to convey.

NOW in exercise of the powers conferred by section twenty-eight of the said Act THIS DEED WITNESSETH as follows:—

1. THE Trustees, as Trustees, hereby convey unto the Grantees, Conveyance on trust for sale.

ALL, &c. (*referring to First Schedule*),

TO HOLD unto the Grantees in fee simple UPON TRUST to sell the same and to stand possessed of the net proceeds of sale and of the rents and profits until sale upon and subject to the trusts and powers upon and subject to which the same ought to be held as representing part of the residuary estate of the said R. D., or the income thereof.

2. [*As in last Prec., saying* "Grantees" *for Grantee.*] Acknowledgment.

IN WITNESS, &c. [*Add two Schedules.*](*i*)

No. IV.

SUBSIDIARY VESTING DEED *by* TRUSTEES *for* SALE *to give effect to a* PARTITION *made by them in favour of a* TENANT *for* LIFE *or* STATUTORY OWNER.(*j*) (*Legal Estate.*)

THIS SUBSIDIARY VESTING DEED is made, &c. [*parties as in Prec. II or Prec. III, saying* "Grantee" *or* "Grantees" *according to whether there is only one tenant for life or two or more statutory owners*]: WHEREAS:— Parties.

(1) [*Recite conveyance on trust for sale or Will followed by an Assent on trust for sale as in Prec. II.*]

(2) By a Vesting Deed (hereinafter called the Principal Deed), dated, &c., and made between, &c., the said R. D. (one of the Principal Vesting Deed.

(*i*) If the land is registered, see the note to the last Precedent. It will be the duty of the transferees to apply for the proper restriction, if any. Registered land.

(*j*) As to subsidiary vesting deeds, see S. L. Act, 1925, s. 10.

persons interested in the proceeds of sale under the trust aforesaid) declared, First, that certain freehold property at —— in the county of —— was vested in him in fee simple upon the trusts of a Trust Instrument of even date therewith ; Secondly, that the said —— (hereinafter called the Estate Trustees) were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 ; Thirdly, that certain additional powers (being the powers hereinafter set forth) were conferred by the said Trust Instrument in relation to the settled land ; And fourthly, that the said R. D. had power during his life to appoint new trustees of the Settlement :

Trust Instrument.

(3) By a Trust Instrument bearing even date with and made between the same parties as the Principal Deed, the said R. D. assigned to the Estate Trustees his share or interest in the proceeds of sale to arise under the recited trust for sale to be held by them as if the same were capital money arising under the Settled Land Act, 1925, from the freehold land thereby settled :

Allotment.

(4) [*As in clause* 2 *of Prec. II*] :

Request to execute vesting deed.

(5) For giving effect to the said allotment or partition the Grantee has requested the Trustees to execute such subsidiary vesting deed as is hereinafter contained :

NOW in exercise of the powers conferred by section twenty-eight of the Law of Property Act, 1925, and pursuant to the Settled Land Act, 1925, THIS DEED WITNESSETH as follows :—

Conveyance.

1. THE Trustees, As Trustees, hereby convey unto the Grantee,

ALL, &c. (*referring to the First Schedule*),

TO HOLD unto the Grantee in fee simple Upon and subject to the same trusts and powers as are declared by the Principal Deed by reference as aforesaid with respect to the freehold land therein comprised.

S. L. Act trustees.

2. THE Estate Trustees are the Trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Additional powers.

3. THE following are the additional powers conferred by the Settlement in relation to the settled land which are mentioned in the Principal Deed, namely :—

[*Set out the powers, if any.*]

Power to appoint.

4. THE power of appointing a new trustee or new trustees of the Settlement is vested in the Grantee during his life.

5. THE Trustees hereby acknowledge the right of the Grantee to production of the documents mentioned in the Second Schedule hereto and to delivery of copies thereof. Acknowledgment.

IN WITNESS, &c. [*Add two Schedules.*]

NOTE.—*If the land is registered, Form* 21 *or* 22 (*Rule* 99) *will be used for this. There will be no recitals. If there are any restrictions on the register they must be complied with.* Registered land.

SECTION III.

EXTINGUISHMENT OF MANORIAL INCIDENTS.

PRELIMINARY NOTE.

THE matters arising in connexion with the extinguishment of manorial incidents, whether affecting copyholds, which have been enfranchised by the L. P. Act, 1922, or freehold land, are fully dealt with in 1 Wolst. & Cherry, 11th ed., Chaps. I and II, while the rules relating to extinguishment by notice, &c., are set out in an Appendix to Vol. II of that book.

The principal points to note are as follows:—

1. The lord's title to the manor is treated by the Acts in the same way as freehold land. Thus mortgagees will take mortgage terms while the mortgagor takes the fee simple in the manor. The persons to join in compensation agreements to extinguish the manorial incidents will be the same as if title were being made on a sale of the manor. For instance, title will be made by absolute owners, tenants for life, statutory owners, trustees for sale and personal representatives, with the concurrence of legal mortgagees if the manor or the manorial incidents have been incumbered. The lord's title.

2. The enfranchised land is under L. P. Act, 1922, 12th Sch., and L. P. Act, 1925, 1st Sch., vested in the true owner, whether claiming as absolute owner, tenant for life, statutory owner, trustee for sale or personal representative, &c., his title may or may not appear on the court rolls; where mere nominees have been entered on the court rolls their legal estates will be got in by the Act and the entries will give no real assistance as to who should be made parties to the compensation agreement. Again, the rule is that whoever would, on a sale of the land, be made conveying parties should be made parties to the compensation agreement. Title of the owner of the land affected.

3. Certain rights are reserved to the lord which will remain vested in him after the execution of the compensation agreement or the service of notice to determine the compensation. These include rights to minerals, sporting rights, franchises, fairs, &c., but they may by agreement be expressly included in the compensation agreement, in which case it will operate as a conveyance thereof. Rights reserved to the lord.

On the other hand, if any rights are acquired by the lord as part of the compensation, *e.g.*, facilities for working minerals, they should be granted under seal. Rights acquired from the owner of the land.

4. The tenure of land enfranchised by the L. P. Act, 1922, is analogous to the tenure of land, formerly copyhold, acquired by a company under compulsory powers, that is to say, the owner acquires the land as freehold, but it remains subject to manorial incidents having a pecuniary value, for which compensation remains to be ascertained and discharged, either in a gross sum or by a terminable rentcharge, though rights granted by the owner of the land may be taken in or towards satisfaction of the claim. Tenure of enfranchised land.

Manorial incidents saved.

5. The manorial incidents so saved consist (L. P. Act, 1922, s. 128 (2)) of the following :—

(a) quit rents and chief rents and other similar rents or payments ;
(b) fines, reliefs, heriots and dues (including fees payable to stewards) ;
(c) forfeitures, other than forfeitures for the conveyance or attempted conveyance of an estate of freehold in the land, and for alienation without licence, whether by way of sale, lease, mortgage or otherwise ;
(d) rights as to timber.

But in lieu of any chattel liable to be seized as a heriot in respect of the former copyhold land a sum equal to the value thereof is payable.

Production of assurances to stewards; discharge of customary payments.

6. Seeing that forfeitures for alienation have been abolished, some remedy had to be devised for securing payment to the lord and steward of the customary payments and for enabling the lord to get into touch with the person who claimed to be entitled to the enfranchised land, as the court rolls might not show the true title. Accordingly, under s. 129 until the manorial incidents have been extinguished, every assurance of the land or any interest therein, subject only to the exceptions referred to below, must be produced to the steward for endorsement within six months or such further time as the court may allow, and the customary payments, including any arrears, must then be paid or tendered. If there is any dispute as to the amount, the sum demanded must be paid without prejudice to the right to recover the excess.

Penalty for non-production.

The penalty for non-production of the assurance within the authorised time is that no legal estate can pass thereby. This is a serious matter. It means that the grantee obtains a bad title. Not only is it bad, but he cannot by means of a special condition force it on a subsequent purchaser, nor rescind the contract if such purchaser, as he will do, insists on the getting in of the legal estate.

What assurances need not be produced.

The assurances which have to be produced do not include—

(a) A Will ; that is not an instrument which after 1925 operates to pass a legal estate ; it is the probate or letters of administration which is evidence of the devolution of the legal estate.

This exception may, in some cases, involve some little delay before the customary payments are made, for the lord has lost his right, seldom exercised, to seize *quo usque*. Still, the matter is not material, for at some time or other the personal representatives must, as a rule, deal with the land, either by conveyance or an assent in writing, operating as a conveyance, and this must be produced to the steward, together with the probate or letters of administration. As a last resort the Lord can serve notice to extinguish the incidents by affixing it to the property.

(b) A grant or assignment of a lease or tenancy for a year or less, or from year to year. The reason for this exception is that by general custom a copyholder has in the past been able to grant such leases or tenancies without licence, while the lessees have been able to assign them without coming to the steward.

All other assurances dealing with legal estates, including vesting orders and vesting declarations, must be produced to the steward.

Alternative to production

Where, in a manor, the practice has been adopted of leaving the customary estate in fee simple outstanding in a trustee on trusts for creating perpetual rentcharges or other derivative legal estates, and the customary payments do not together amount to more than 5*s*., an attested copy of the assurance may be sent to the steward with a sum of 10*s*. ; he will then give a receipt, which will have the same effect as an endorsement. This only applies to a few manors in the North of England.

7. Until the manorial incidents are extinguished, the same customary payments are payable in respect of a transaction (s. 130) as would have been payable had it been carried out by a customary assurance and the land had remained copyhold. Customary payments.

Where a licence would have been required the like fines are payable for the transaction as would have been payable for the licence. Licences.

Subject to any licence fine (*e.g.*, for a lease), no fine is payable for a mortgage until— Mortgages.

(a) the mortgagee conveys under his power of sale, or

(b) the mortgagee transfers without the concurrence of the mortgagor, or

(c) the right of redemption is extinguished.

Under the old practice mortgages were taken either by a covenant to surrender or by a Conditional Surrender, the mortgagee did not need to be admitted till he sold or transferred with the mortgagor joining to give a new covenant, or a new conditional surrender, or he had acquired title by foreclosure or under the Limitation Acts. Thus these exceptions give effect to the old practice.

But the lord's right to double fines, on these occasions, where the mortgagee had not been admitted before 1926, is saved, for a fine would have been payable on the admission of the mortgagee and of the purchaser, or of the mortgagee and the transferee. Double fines.

Heriots are payable on the same occasions on which they would have accrued had the land remained copyhold. Heriots.

Fines and heriots payable before 1926 should be demanded before 1932; those becoming payable thereafter should be demanded within six years. Recovery of fines, &c.

Time does not begin to run till the fine, &c. becomes enforceable, *i.e.*, when an assurance is produced or the incidents are extinguished by agreement or notice.

8. Stewards appointed after 28th June, 1922, will take the prescribed fees (L. P. Act, 1922, s. 131); those appointed before 29th June, 1922, will, in effect, take fees similar to those which they would have taken had the land remained copyhold: *ib.* Stewards' fees.

9. Rights to forfeitures, so far as not extinguished, are enforceable by action, subject to notice: *ib.*, s. 132. Forfeitures.

10. Copyholds for lives, not perpetually renewable, are converted into leaseholds for terms of ninety years terminable by notice on either side after the event on which the copyhold interest would have determined: *ib.*, s. 133; L. P. Act, 1925, s. 149 (6). Copyholds for years, not perpetually renewable, are converted into leaseholds for a corresponding term: L. P. Act, 1922, s. 133. Thus in each case the owner of the land takes a "term of years absolute" which is a legal estate. Copyholds for life or years not perpetually renewable.

No compensation agreement or notice to ascertain the compensation is required in these cases.

11. Copyholds perpetually renewable, as distinguished from leases and underleases containing a covenant for perpetual renewal, are converted into fee simple estates which vest in the owners of the land in the same way as copyholds of inheritance: *ib.*, s. 135. If, however, the last admitted tenant (being the true owner) dies before 1926, the land will vest in his personal representatives. They will give effect to the beneficial interests by means of an assent in writing, which must be produced to the steward; in the meantime they will be the persons to enter into the compensation agreement. Copyholds perpetually renewable.

12. There are three ways in which the manorial incidents saved will (s. 138) become extinguished— Modes of extinguishment.

(a) On the execution before 1936 of a compensation agreement by the parties respectively interested in the incidents and the land affected, being the persons who, on a sale, would respectively make a title thereto; Compensation agreements.

Notice to determine compensation.

(b) On the service of a notice by either party on the other after 1925, requiring the compensation to be assessed; the lord may not, however, serve a notice till after 1930, the object of this restriction is to give the owner of the land time to find the compensation money. The service of the notice brings the matter within the jurisdiction of the Minister of Agriculture; it should be avoided, save as a last resort, for it may increase the costs of effecting the transaction. But, even after notice has been served, the parties may, before the compensation is assessed, effect the extinguishment by a compensation agreement made before 1936: s. 139 (1) (ix). In some cases, however, no fees are payable to the Ministry in regard to compulsory proceedings; such procedure may obviate protracted and expensive negotiations, but in the first instance, a serious effort should be made to come to an agreement.

Expiration of ten years.

(c) On the expiration of ten years from 1st January, 1926, without a compensation agreement having been made or notice having been served. This period may, however, in special cases, be extended by the Minister: s. 138 (1) (ii).

Saving of past incidents.

But though the incidents may be extinguished in any of these ways, the extinguishment does not affect the right to enforce incidents which became due before the date of extinguishment: s. 138 (1) (i).

Inducements to effect extinguishment before end of ten years.

13. It will generally be worth while to effect the extinguishment before the end of the ten years, for in that case the compensation agreement or charge or certificate by the Minister does not bear any stamp duty, nor will the Minister charge any office fees or expenses unless the application to him is unnecessary or unreasonable: s. 139 (1) (vii).

Compensation rights remain for fifteen years.

14. Where the incidents are extinguished by effluxion of the ten years, the parties may at any time before 1941 apply to the Minister to determine the amount of the compensation: s. 140. This will be fixed under the Copyhold Act, 1894, as amended, which so far as applicable is set out in the Rules: 2 Wolst. & Cherry, 11th ed., Appendix.

In this case no allowance is made for customary payments which would otherwise have accrued after the end of the ten years (s. 140 (*a*)); nor is the lord entitled to interest between the expiration of the ten years and the date of the application: s. 140 (*b*).

When lord should serve notice.

On this account it may sometimes be worth while for the lord, failing a compensation agreement, to serve a notice immediately before the end of the ten years.

Final cesser of compensation claims.

15. If failing a compensation agreement or notice, no application is made to the Minister before the end of the fifteen years, no compensation will thereafter be payable for the extinguishment of the incidents: s. 140 (*c*).

Costs after the ten years have expired.

16. After the ten years have expired, no compensation agreement or notice having been made or served, the costs of the application to the Minister will, apart from agreement, be borne by the person entitled to the land affected, unless for special reasons the Minister makes an order to the contrary: s. 140 (*d*).

As a general rule the owner of the land will be the person to benefit; hence it is fair that the costs should be borne by him unless he can show that the lord derives an advantage.

Costs generally.

This ultimate liability of the owner of the land will enable the lord, as a rule, to insist on the costs of the compensation agreement being borne by the owner.

When notices should be served by tenant.

It also makes it worth while for the owner of the land, failing a compensation agreement, to serve a notice on the lord before the end of the ten years.

17. The method of ascertaining the amount of compensation is on the same lines as that adopted for many years past under the Copyhold Acts, by means of a scale, now made binding, subject only to special orders to be made

by the Minister where the fixed scale would work an injustice. This scale is fully discussed in 1 Wolst. & Cherry, 11th ed., ch. II, where examples are given of sums working out the amount of compensation payable in different cases. Mode of ascertaining compensation.

The general principle is enacted in s. 139 (1) (ii).

If any item has not been covered by the scale then under s. 138 (4), proviso, the compensation can be dealt with under the old law. This might conceivably happen in the case of what are known as "freehold" manors, *i.e.*, manors in which freeholds are held under custom and are affected by some manorial incidents. These are dealt with by ss. 128 (3), 138 (1); it may be necessary for the Minister to make some special rules in regard to them. See the definition of "copyhold land" in s. 189, which excludes land in which the freehold is not vested in the lord. Land in which the freehold is not in the lord.

18. A steward appointed before 29th June, 1922, is entitled to compensation for loss of office in accordance with the scale in L. P. Act, 1922, 14th Sch. The amount is added to the compensation payable for the extinguishment of the incidents. Compensation to stewards for loss of office.

19. The remuneration of solicitors in connexion with the extinguishment of manorial incidents is to be governed by the Remuneration Order to be set out in an Appendix, to 2 Wolst. & Cherry, 11th ed. Remuneration of solicitors.

20. When once the aggregate amount (s. 139 (1) (iv)) of the compensation money and costs has been ascertained, it may be discharged either in a gross sum or by a terminable rentcharge, made up partly of principal and interest, spread over a period of twenty years. Compensation money, how payable.

There are special cases in which the amount must be paid in a gross sum, but, apart from these, unless it is paid within thirty days after ascertainment, it will, unless the parties otherwise agree, be paid by twenty equal annual instalments, the first to be paid on the next 1st January, with interest at £5 10*s.* per cent. from the date of extinguishment, and the subsequent instalments on 1st January in each year, with interest at the like rate on so much of the compensation as for the time being remains unpaid (s. 139 (1) (v)), and a variable rentcharge will issue out of the land accordingly: *ib.* Terminable rentcharge.

Thus, as and when an instalment is paid the interest subsequently payable is reduced, this reduces the amount of the rentcharge to be paid in each subsequent year.

21. The compensation must be paid in a gross sum in the following cases:— Gross sums, when payable.

(a) if the land is settled and there is sufficient capital money (including investments representing capital money) out of which it can be paid: s. 139 (1) (v); S. L. Act, 1925, s. 117 (1) (ii);

(b) if the land is held on trust for sale and there is sufficient personal estate (not being chattels real) out of which it can be paid: s. 139 (1) (v);

(c) if it does not exceed £20 unless the court otherwise directs; s. 139 (1) (v);

(d) if it is paid in respect of an interest derived out of the fee simple (*e.g.*, a perpetual rentcharge, or a term of years absolute or an easement): s. 142 (*b*).

The gross sum carries interest at £5 10*s.* per cent. per annum from the date of extinguishment payable half-yearly (ss. 138 (7), 139 (1) (v)); it is charged on the land, and, for the purpose of recovering it, the person entitled to the charge has the powers of a chargee by way of legal first mortgage: s. 138 (7). Rate of interest, how secured.

Forms of a compensation agreement and of a receipt for customary payments and for the gross sum (s. 138 (11)) are given in the 13th Sch: see also *infra*. Forms.

No. I.

COMPENSATION AGREEMENT *between the Lord of the Manor and the person entitled to land affected by* MANORIAL INCIDENTS, *both being* ABSOLUTE OWNERS.(*a*) (*Legal Estate.*)

MANOR of —— in the county of ——.

Parties. THIS COMPENSATION AGREEMENT is made, &c. BETWEEN A. B., of, &c., lord of the above-mentioned manor (hereinafter called the Lord), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Seisin of the lord. (1) The Lord is seised of the said manor for an estate in fee simple in possession free from incumbrances:

Title of the purchaser. (2) As appears from the First Schedule hereto the Purchaser is seised in fee simple in possession of the lands mentioned in the Second Schedule hereto (formerly copyhold of the said manor) subject to the rights reserved to the Lord by the Law of Property Act, 1922, and to the manorial incidents saved by the said Act and intended to be hereby extinguished, but otherwise free from incumbrances:

NOW pursuant to the Law of Property Act, 1922, THIS AGREEMENT WITNESSETH and it is hereby declared as follows:—

Compensation gross sum. 1. THE compensation for the extinguishment of the manorial incidents saved by Part V of the said Act affecting the land mentioned in the Second Schedule hereto [and of the rights of the Lord in or to any mines and minerals in or under the said land and the sporting and other rights affecting the same preserved by the Twelfth Schedule to that Act (*b*)] shall be—

(*a*) The form in L. P. Act, 1922, 13th Sch., is a mere skeleton given to illustrate general principles; it is a little out of date as respects settled land in consequence of the alterations in practice made by the S. L. Act, 1925. In framing compensation agreements only the persons who, on a sale of the manorial incidents and of the land affected, would have been able to make a title thereto respectively and give a receipt for the purchase-money will be made parties. It is assumed in these Precedents that the lord will have a form of compensation agreement prepared which is applicable to his title, leaving a schedule in which a statement of the title of the owner of the land can be added. It should be noted that two Precedents will be required in each case, the agreement and the receipt following. In many cases statutory declarations will also be taken.

Forms of Compensation Agreements and Receipts.

(*b*) These rights can only be included in the agreement with the consent of the lord.

Duplicate. Land charge.

If the compensation is not paid at once in a gross sum, the agreement must be executed in duplicate. If there is any delay in payment a land charge should be registered as the agreement becomes a puisne mortgage.

The sum of £—— with interest thereon payable half-yearly at the rate of five and a half pounds per cent. per annum from the date hereof until paid.

[shall be—

(1) The principal sum of £—— to be paid by twenty equal instalments, the first instalment to be paid on the first day of January next with interest at five and a half per cent. per annum on the said principal sum from the date hereof; [Variation if rentcharge is to be paid.]

(2) A further instalment with interest at the like rate on so much of the said principal sum as for the time being remains unpaid to be paid on every subsequent first day of January until the said principal sum shall be fully paid (all interest up to date being paid with the instalments);

(3) So long as any of the said instalments and interest remain payable a terminable and variable rentcharge commencing from the date hereof and accruing from day to day (but payable at the same time as the instalments and interest) shall issue out of the land mentioned in the Second Schedule hereto [*or* out of the part of the land described in Part I of the Second Schedule hereto] of an amount equal to the said instalments and interest from time to time payable and so as to secure the same.(*c*)]

2. THE Lord hereby acknowledges the right of the Purchaser to production of the documents mentioned in the Third Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof. Acknowledgment by the lord.

3. THE Purchaser hereby acknowledges the right of the Lord to production of the documents mentioned in the First Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof. Acknowledgment by the purchaser.

4. THE steward's compensation (if any) and all costs and expenses paid or incurred by the Lord and recoverable from the Purchaser in respect of this extinguishment have been included in the compensation money aforesaid.(*d*) Stewards' compensation and costs.

(*c*) The agreement should be taken in duplicate. A compensation rentcharge, though only for a term, is a legal estate: L. P. Act, 1925, s. 205 (1) (xxvii). As the lord will not have the deeds, a landcharge should be registered. It may be redeemed under L. P. Act, 1922, s. 139 (3), or L. P. Act, 1925, s. 191. For the remedies of rentchargees: L. P. Act, 1925, s. 121. As to priority: L. P. Act, 1922, s. 138 (6). As to the priority and remedies in the case of gross sums: *ib.*, s. 138 (7). Redemption of compensation rentcharges. Remedies.

(*d*) The costs of a new description or plan must be borne by the party requiring it: see note to L. P. Act, 1922, 13th Sch., in the 1st Sch. to the form

As WITNESS the hands of the parties hereto the day and year first above written.(*e*)

THE FIRST SCHEDULE.

Statement of the title of the Purchaser.

1. 18— On this date X. and Y. were pursuant to a Surrender [Bargain and Sale] of even date admitted as tenants of the land mentioned in the Second Schedule to hold to them and their heirs. At the date of the said Admission they were the trustees of a Settlement, dated, &c.
2. 18— The said X. died on this date.
3. 18— The said Y. died on this date but no further admission has ever been taken or entered on the rolls since his death.
4. 18— By a Disentailing Assurance of this date (enrolled on the court rolls) the said land was disentailed and limited on such trusts as F. D. and G. D. should appoint.
5. 18— By a Resettlement of this date the said land was limited on trusts for the said F. D. (who died on, &c.) and G. D. successively for life with remainder in trust for the first and other sons of the said G. D. successively according to seniority in tail male with remainders over.
6. 18— On this date the said G. D. married J. L. (afterwards J. D.) and there was issue of the said marriage one child only, namely, the Purchaser, who was born on the ——.
7. 18— The said J. D. died on this date.
8. 19— The said G. D. died on this date and thereupon the Purchaser became entitled to the said land for an equitable estate in tail male in possession (there being a custom to entail in the said manor) free from any family charges or powers of charging.

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of Compensation Agreement. The costs of statutory declarations as to title must also be borne by the persons requiring them: L. P. Act, 1922, s. 138 (5) (vi).

Stamps.

(*e*) No stamp duty is payable in respect of a compensation agreement: L. P. Act, 1922, s. 139 (1) (vii). If the purchaser releases his rights to minerals or grants facilities for working them this may be inserted in the agreement, which must then be made under seal: see note to the statutory form, and L. P. Act, 1922, s. 138 (12).

Grants by tenant.

9. 19— By a Disentailing Assurance of this date (enrolled on the court rolls) the said estate tail was barred and the said land was limited in trust for the Purchaser and his heirs.

10. 1st January 1926. By virtue of the Law of Property Act, 1922, 12th Schedule, and the Law of Property Act, 1925, 1st Schedule, Part II, the said land became vested in the Purchaser in fee simple subject to the rights of the Lord and to the manorial incidents.(*f*)

THE SECOND SCHEDULE.

Description of the land affected by the Manorial Incidents.

[NOTE.—*This description will be taken from the Court Rolls unless a new description is agreed to. In default of agreement the party requiring a plan or new description must bear any additional costs incident thereto.*(*g*)]

THE THIRD SCHEDULE.

Particulars of documents relating to the title to the said Manor and retained by the Lord.

(*To contain these particulars.*(*h*))

No. II.

RECEIPT *for* RENTS, *&c., and for* GROSS SUM (*to be endorsed on the Compensation Agreement*).

MANOR of —— in the county of ——.

1. THE within-named Lord of the said Manor hereby acknowledges that all rents, fines, reliefs, heriots and fees payable in

(*f*) This schedule is given to show how the entries on the rolls may give little or no assistance in ascertaining the person in whom the land may become vested. A claim will be made for the fees, &c., which ought to have been paid on an admission of a new trustee as well as those which would have been payable had the purchaser been admitted: L. P. Act, 1922, 12th Sch., para. 8 (vi). Court rolls may be misleading.

(*g*) It will generally be expedient first to set out the description on the rolls, for purposes of identity, and then a modern description referring to a plan. It will be in the interests of both parties to agree a plan, the lord and steward will require to know what land has been discharged, and if a rentcharge is made payable the lord must know what the security is. On the other hand the Compensation Agreement, with the endorsed receipt, becomes the root of title to the freehold interest, as formerly an enfranchisement deed did: L. P. Act, 1925, s. 44 (7). Plans. Compensation agreement a root of title.

(*h*) As to the title deeds relating to a manor (L. P. (Amend.) Act, 1924, 2nd Sch., para. 2 (6)), the M. R. cannot make an order as to these. Any person interested in the enfranchised land is entitled to inspect the court rolls: L. P. Act, 1922, s. 144. Court rolls.

respect of the land referred to in the within Agreement have been duly discharged.

2. THE said Lord hereby acknowledges the receipt of the compensation money by the within written Agreement agreed to be paid and all interest (if any) due thereon.(*i*)

Dated this —— day of —— 19—.

No. III.

STATUTORY DECLARATION *as to the title of the Lord or owner of the land.*(*j*)

MANOR of —— in the county of ——.

I, X. Y., of, &c., Solicitor, hereby solemnly and sincerely declare as follows :—

1. I and my partners or other members for the time being of the firm of —— have for the last —— years and upwards acted as —— (*here set out means of knowledge*) in connexion with the said manor [*or* the land mentioned in the Schedule hereto parcel of the said manor]. I have inspected the documents hereinafter referred to and accordingly I am well acquainted with the facts hereinafter mentioned.

2. [*Here set out the facts which would be material to the title to the Manor, or the land as the case may be, if the same were sold. Do not refer to equitable or other interests which would be overreached on a sale.*]

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835. [*Add Schedule, if the declaration relates to land affected by Manorial Incidents.*] Declared, &c.

Endorsed receipt.

(*i*) Para. 2 will only be used when the compensation is paid in a single gross sum. If a rentcharge is created separate receipts must be given as and when each instalment is paid.

If the manor is settled, the receipt for the compensation money must be given by the S. L. Act trustees. The persons who would be entitled to give a receipt for the proceeds of sale if the manorial incidents were sold are the persons to give a receipt. The usual receipt (2*d.*) stamp should be used.

Statutory declaration as to title.

(*j*) As to statutory declarations, see L. P. Act, 1922, s. 138 (5) (ii)-(vi). It will generally be worth while for the steward to have a statutory declaration made as to the title of the lord, showing who has a right to give a receipt for the compensation money. He will then be in a position to furnish an attested copy to each applicant desiring to extinguish manorial incidents at the cost of such applicant. If the lord is to take a compensation rentcharge he should insist on a statutory declaration being made and handed over in regard to the owner's title. If a gross sum is paid. the lord will not be concerned with the alleged title.

No. IV.

COMPENSATION AGREEMENT *between the Lord of the Manor and a person entitled to land affected by Manorial Incidents, both being* ABSOLUTE OWNERS, *subject to* LEGAL MORTGAGES.(*k*) (*Legal Estate.*)

MANOR of —— in the County of——.

Parties.

THIS COMPENSATION AGREEMENT is made, &c. BETWEEN A. B., of, &c., Lord of the above-mentioned Manor (hereinafter called the Lord), of the 1st part, C. M., of, &c., and D. M., of, &c. (hereinafter called the Manor Mortgagees), of the 2nd part, E. T., of, &c. (hereinafter called the Purchaser), of the 3rd part and F. M., of, &c., and G. M., of, &c. (hereinafter called the Estate Mortgagees), of the 4th part: WHEREAS:—

Mortgage of the manor.

(1) By a Mortgage, dated, &c., and made between the Lord of the one part and the Manor Mortgagees of the other part, the Lord (being then seised of the said manor for an estate in fee simple free from incumbrances) conveyed the same with other property to the Manor Mortgagees in fee simple subject to redemption by the Lord on payment of the principal sum of £—— and interest thereon as therein mentioned:

Effect of Law of Property Act, 1925.

(2) By virtue of the Law of Property Act, 1925, the said Manor became vested in the Manor Mortgagees for a term of 3,000 years without impeachment of waste subject to cesser on redemption under the recited Mortgage and subject to the said term the said Manor became vested in the Lord for an estate in fee simple in possession:

State of mortgage debt.

(3) The said principal sum of £—— remains owing on the security of the recited mortgage with the current interest thereon:

Title of the Estate Mortgagees and the Purchaser.

(4) As appears from the First Schedule hereto the Estate Mortgagees are entitled to the land (formerly copyhold of the said Manor) mentioned in the Second Schedule hereto for the residue of a term of 3,000 years without impeachment of waste subject to cesser on redemption on payment of the principal sum of £——, and interest thereon and subject to that term the said land is vested in the Purchaser for an estate in fee simple in possession subject to the rights reserved to the Lord by the Law of Property Act, 1922, and to the manorial incidents saved by the said Act,

Concurrence of legal mortgagees.

(*k*) Legal mortgagees must concur as they are requisite parties to a sale and to give the compensation rentcharge (if any) the proper priority: L. P. Act, 1922, ss. 138 (5) (i), 188 (8).

and intended to be hereby extinguished but otherwise free from incumbrances:

NOW pursuant to the Law of Property Act, 1922, THIS AGREEMENT WITNESSETH and it is hereby declared as follows:—

Compensation.

1. [*As in clause* 1 *of Prec. No. I of this Group with variations if a rentcharge is to be paid. In this case the rentcharge should be separately charged by way of legal mortgage to the Manor Mortgagees as a substituted security.*]

Acknowledgment by the Manor Mortgagees.

2. THE Manor Mortgagees hereby acknowledge the right of the Purchaser and the Estate Mortgagees and each of them to production of the documents mentioned in the Third Schedule hereto and to delivery of copies thereof.

Acknowledgment by the Estate Mortgagees.

3. THE Estate Mortgagees hereby acknowledge the right of the Lord and the Manor Mortagees and each of them to production of the documents mentioned in the First Schedule hereto and to delivery of copies thereof.

Steward's compensation and costs.

4. (*As in clause* 4 *of Prec. No. I of this Group.*)

AS WITNESS, &c.(*l*)

THE FIRST SCHEDULE.

Statement of the title of the Estate Mortgagees and the Purchaser.

1. —— 18— On this date the Purchaser was pursuant to a Conveyance bearing even date therewith and made, &c. (being a conveyance made in exercise of the powers conferred by section twenty of the Settled Land Act, 1882) admitted tenant of the land mentioned in the Second Schedule to hold to him and his heirs at the will of the Lord according to the custom of the said Manor at accustomed rents, suits, fines and services.

2. —— 19— By a Deed of Covenant to Surrender of this date made between the Purchaser of the one part and the Estate Mortgagees of the other part in consideratiou of the sum of £——, the Purchaser, As Beneficial Owner, covenanted to surrender the land mentioned in the Second Schedule to the use of the Estate Mortgagees and their heirs subject to a condition for making

(*l*) To be executed in duplicate. See notes to Prec. No. I. As to statutory declarations of title, see Prec. No. III.

void the said surrender on payment on the —— day of —— of the said sum of £——, and interest thereon as therein mentioned.

3. —— 19— By a Conditional Surrender of this date the Purchaser surrendered the said land to the use of the Estate Mortgagees and their heirs subject to a condition for making void the said surrender as aforesaid but the Estate Mortgagees were never admitted pursuant thereto.(*m*)

4. 1st January, 1926. By virtue of the Law of Property Act, 1922, Twelfth Schedule, and the Law of Property Act, 1925, First Schedule, Part II, the said land became vested in the Estate Mortgagees for a term of 3,000 years without impeachment of waste subject to cesser on payment of the said sum of £—— and interest thereon (which sum with the current interest still remains owing) and subject to the said term in the Purchaser in fee simple subject to the rights of the Lord and the said manorial incidents.

THE SECOND SCHEDULE.

Description of the land affected by the manorial incidents.

[*See note to Second Schedule to Prec. No. I, supra.*]

THE THIRD SCHEDULE.

Particulars of documents relating to the title to the said manor and retained by the Manor Mortgagees.

[*See note to the Third Schedule to Prec. No. I, supra.*]

No. V.

RECEIPT *for* RENTS, *&c., and for* GROSS SUM. (*To be endorsed on Compensation Agreement.*)

MANOR of —— in the County of ——.

1. [*Receipt by lord for rents, &c., as in Clause I of Prec. No. II, supra.*]

2. THE within-named Manor Mortgagees hereby acknowledge the receipt and the said Lord acknowledges the payment of the compensation money by the within-written Agreement agreed to be paid and all interest (if any) due thereon which

(*m*) It is immaterial whether the mortgage is taken by a covenant to surrender alone, or with a conditional surrender, the mortgagees will take a mortgage term under L. P. Act, 1922, 12th Sch.

interest has been paid to the said Lord (as hereby he admits) the said compensation money being paid towards reduction of the mortgage debt owing to the Manor Mortgagees.(*n*)

Dated this —— day of —— 19—.

No. VI.

COMPENSATION AGREEMENT *between* LEGAL MORTGAGEES *of the Manor and of the land affected with a view to Sales by them of the Manor and the land.* (*Legal Estate.*)

MANOR of —— in the County of ——.

Parties.

THIS COMPENSATION AGREEMENT is made, &c. BETWEEN C. M., of, &c., and D. M., of, &c. (hereinafter called the Manor Mortgagees), of the one part and F. M., of, &c., and G. M., of, &c. (hereinafter called the Estate Mortgagees), of the other part: WHEREAS:—

Mortgage of the Manor.

(1) By a Mortgage, dated, &c., and made between A. B. of the one part and the Manor Mortgagees of the other part the said A. B. being then seised of the said Manor for an estate in fee simple free from incumbrances conveyed the same with other property to the Manor Mortgagees in fee simple for securing payment to them of the sum of £—— on a day therein mentioned and since passed with interest thereon as therein mentioned which principal sum with large arrears of interest now remains owing to the Manor Mortgagees who are proposing to sell the said Manor under their power of sale:

(2) [*As in recital No. 2 of Prec. No. IV, substituting* "the said A. B." *for* "the lord."]

Title of the Estate Mortgagees to the land.

(3) As appears from the First Schedule hereto the Estate Mortgagees are entitled to the land (formerly copyhold of the said manor) for the residue of a term of 3,000 years without impeachment of waste for securing payment to them of the principal sum of £——mentioned in the First Schedule hereto on a day long since passed with interest thereon which principal sum with large arrears of interest now remains owing to the Estate Mortgagees who are proposing to sell the said land under their power of sale:

(*n*) If the compensation money is to be paid to the lord the receipt will be the same form as in Prec. No. II, save that the words "which payments have been made with the consent of the Manor Mortgagees as they hereby admit" will be added at the end. If a rentcharge is reserved para. 2 will not be used.

NOW, pursuant, &c. (*as in Prec. No. I, supra*):

Compensation in a gross sum.

1. [*As in clause* 1 *of Prec. No. I, supra, omitting the parts referring to a compensation rentcharge. In this case the Estate Mortgagees should pay the compensation money and add it to their mortgage debt.*]

Acknowledgment by the Manor Mortgagees.

2. THE Manor Mortgagees hereby acknowledge the right of the Estate Mortgagees and each of them to production of the documents mentioned in the Third Schedule hereto and to delivery of copies thereof.

Acknowledgment by the Estate Mortgagees.

3. THE Estate Mortgagees hereby acknowledge the right of the Manor Mortgagees and each of them to production of the documents mentioned in the First Schedule hereto and to delivery of copies thereof.

Steward's compensation and costs.

4. [*As in clause* 4 *of Prec. No. I of this Group.*]

AS WITNESS, &c.

THE FIRST SCHEDULE.

Statement of the title of the Estate Mortgagees.

1–4. [*As in First Schedule to Prec. No. IV, substituting* "A. B." *for* "the purchaser" *and omitting the reference to the title of the purchaser at the end of clause* 4.]

THE SECOND SCHEDULE.

Description of the land affected by the Manorial Incidents.

[*See note to Second Schedule to Prec. No. I, supra.*]

THE THIRD SCHEDULE.

Particulars of documents relating to the title to the said Manor and retained by the Manor Mortgagees.

(*To contain these particulars.*)

No. VII.

RECEIPT *for* RENTS, *&c., and for* GROSS SUM. (*To be endorsed on the Compensation Agreement.*)

1. THE within-named Manor Mortgagees (*o*) hereby acknowledge that all rents, fines, reliefs, heriots and fees payable in respect of the land referred to in the within Agreement have been duly discharged.

Receipt by receiver.

(*o*) This assumes that the Manor Mortgagees have taken possession. If they have only appointed a receiver the receipt for rents, &c., and for interest should be given by him. As to statutory declarations as to title, see Prec. No. III, *supra*.

2. The said Manor Mortgagees hereby acknowledge the receipt of the compensation money by the within-written Agreement agreed to be paid and all interest (if any) due thereon which are to be taken towards satisfaction of the principal money and interest owing to the Manor Mortgagees as therein mentioned.

Dated this —— day of ——, 19—.

No. VIII.

COMPENSATION AGREEMENT *between* Tenants *for* Life *of the* Manor *and of the* Land *affected respectively.*(*p*) (*Legal Estate.*)

Manor of ——, in the County of ——.

Parties. THIS COMPENSATION AGREEMENT AND SUBSIDIARY VESTING DEED is made, &c. Between A. B., of, &c., lord of the above-mentioned Manor (hereinafter called the Lord), of the 1st part, C. T., of, &c., and D. T., of, &c. (hereinafter called the Manor Trustees), of the 2nd part, E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part, and G. T., of, &c., and H. T., of, &c. (hereinafter called the Estate Trustees), of the 4th part: Whereas:—

Title to the Manor. (1) By a Vesting Deed (hereinafter called the Manor Deed), dated, &c., and made between the Manor Trustees of the one part and the Lord of the other part for giving effect to the requirements of the Settled Land Act, 1925, the Manor Trustees declared that the said manor (with other property) was vested in the Lord in fee simple Upon the trusts of a Settlement, dated, &c., therein referred to, and declared that the Manor Trustees were the trustees of the Settlement for the purposes of the said Act, and that the power to appoint new trustees of the Settlement was vested in the Lord during his life:

Counsel's certificate. (2) By a Certificate of Counsel given at the time of the execution of the Manor Deed it was certified that the Lord was at the date thereof the tenant for life under the said Settlement, that the Manor Trustees were the then trustees of the Settlement for the purposes of the Settled Land

Variation where statutory Owners are entitled.

(*p*) This Prec. can be readily adapted if statutory owners are (*e.g.*, during the subsistence of a discretionary trust or during a minority) entitled in place of tenants for life. During a minority the S. L. Act trustees will be the statutory owners unless the manor or the land is vested in personal representatives. If the statutory owners are in each case the S. L. Act trustees there will only be two sets of parties to the agreement.

Act, 1925, and that the Lord had power during his life to appoint new trustees thereof :

(3) As appears from the First Schedule hereto the Purchaser is entitled to the land (formerly copyhold of the said manor) mentioned in the Second Schedule hereto for an estate in fee simple on the trusts of the Will referred to in that Schedule, but subject to the rights reserved to the Lord by the Law of Property Act, 1922, and to the manorial incidents saved by the said Act and intended to be hereby extinguished : And the Estate Trustees are the trustees of the Settlement of the said land for the purposes of the Settled Land Act, 1925 : Title of the Purchaser and the Estate Trustees.

(4) There are no investments or capital money held by the Estate Trustees out of which compensation money can be paid : No capital money.

NOW, pursuant, &c. (*as in Prec. No. I, supra*):

1. (1) [*As in clause* 1 *of Prec. No. I of this Group, with variations if a rentcharge is to be paid. If the gross sum is not paid at once it will, with the interest thereon, become* (*L. P. Act*, 1922, *s.* 138 (7)) *charged by way of legal mortgage in favour of the Manor Trustees. If there is any capital money available the compensation must be paid in a gross sum. If a rentcharge is reserved the Compensation Agreement must be converted into a Subsidiary Vesting Deed; see the additional sub-clauses next following.*] Compensation.

(2) THE Lord shall hold the said rentcharge (which is hereby vested in him) upon and subject to the same trusts and powers as are declared by the Manor Deed by reference as aforesaid with respect to the said manor. Trusts of the rentcharge.

(3) THE Manor Trustees are (as respects the said rentcharge) the Trustees of the Settlement for the purposes of the Settled Land Act, 1925. S. L. Act trustees.

(4) THE power of appointing a new trustee or new trustees of the Settlement comprising the said rentcharge is vested in the Lord during his life. Power to appoint trustees.

2. (*As in clause* 2 *of Prec. No. I, save that the undertaking will be omitted.*) Acknowledgment by the Lord.

3. (*As in clause* 3 *of Prec. No. I, referring to the documents in the First Schedule, save that the undertaking will be omitted.*) The like by the Purchaser.

4. (*As in clause* 4 *of Prec. No. I.*) Steward's compensation and costs.

IN WITNESS, &c.(*q*)

(*q*) In this Precedent, which must be executed in duplicate, it is assumed that a rentcharge is granted, hence it becomes a subsidiary vesting deed and should be under seal : S. L. Act, 1925, s. 10.

FIRST SCHEDULE.

Statement of the Title of the Purchaser.

——19— By his Will of this date, R. F., after appointing the Estate Trustees to be his executors and the trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, devised certain freehold lands to uses under which the Purchaser became tenant for life in possession with divers remainders over: And the said R. F. (who had been admitted tenant to him and his heirs on the, &c., of the land then of copyhold tenure described in the Second Schedule hereto) devised the said land to the Estate Trustees Upon trusts corresponding to the uses thereby declared concerning the freehold lands thereby devised in settlement.

——19— The said R. F. died on this date.

——19— The said Will was on this date duly proved at the —— Probate Registry by the Estate Trustees.

——19— On this date the Estate Trustees were admitted pursuant to the said devise.

1st January, 1926 By virtue of the Law of Property Acts, 1922 and 1925, the said land was enfranchised and became vested in the Purchaser in fee simple upon the trusts hereinbefore referred to.

——1926 By a Vesting Deed of this date, made between the Estate Trustees of the one part and the Purchaser of the other part, for giving effect to the requirements of the Settled Land Act, 1925, the Estate Trustees declared that (with other property) the land described in the Second Schedule hereto was vested in the Purchaser in fee simple (subject to the rights of the Lord and to the manorial incidents aforesaid) and it was declared First that the Purchaser should stand possessed of the premises Upon the trusts and subject to the power and provisions upon and subject to which under the said Will or otherwise the same ought to be held from time to time; Secondly, that the Estate Trustees were the Trustees of the Settlement for the purposes of the Settled Land Act, 1925; And Thirdly, that the power to

appoint new trustees of the Settlement was vested in the Purchaser during his life.

—— 1926 By Counsel's Certificate of this date it was certified that the facts stated in the said Vesting Deed were correct.

THE SECOND SCHEDULE.

Description of the Land affected by the Manorial Incidents.
[*See note to Second Schedule to Prec. No. I, supra.*]

THE THIRD SCHEDULE.

Particulars of Documents relating to the Title to the said Manor and retained by the Lord.

No. IX.

RECEIPT *for* RENTS, *&c., and for* GROSS SUM. (*To be endorsed on the Compensation Agreement.*)

MANOR of—— in the County of ——.

1. THE within-named Lord (*as in Prec. No. II, supra*).

2. THE within-named Manor Trustees hereby acknowledge the receipt of the compensation money by the within-written Agreement agreed to be paid and the said Lord acknowledges that all interest (if any) due thereon has been paid. Receipt for gross sum.

[NOTE.—*This clause will not be used if a rentcharge is created; in this case separate receipts must be given as and when each instalment is paid.*]

Dated this —— day of —— 19—.(*r*)

No. X.

COMPENSATION AGREEMENT *between the Lords of the Manor and the persons entitled to land affected by* MANORIAL INCIDENTS, *both being* TRUSTEES *for* SALE. (*Legal Estate.*)

MANOR of —— in the County of ——.

THIS COMPENSATION AGREEMENT is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c., Lords of the above-mentioned manor (hereinafter called the Lords), of the one part and E. F., of, &c., and G. H., of, &c. (hereinafter called the Purchasers), of the other part: WHEREAS:— Parties.

(1) By a Conveyance, dated, &c., and made, &c., the said Title of the Lords.

(*r*) For forms of statutory declarations as to title, see Prec. No. III, *supra*.

manor (with other property) was conveyed to the Lords in fee simple Upon trust to sell the same and to stand possessed of the net proceeds and of the rents and profits until sale on the trusts declared concerning the same by a Settlement of even date therewith :

[*or* (1) X. Y., being at his death seised of the said manor duly made his Will dated, &c., and thereby after appointing the Lords to be his executors devised the said manor to them Upon trust to sell the same and to stand possessed of the net proceeds and of the rents and profits until sale on the trusts therein mentioned :

(2) The said X. Y. died, &c., and on the —— day of —— 19—, the said Will was proved at the —— Probate Registry by the Lords who as such executors have assented to the recited devise]. *This assumes that the assent was given before* 1926 :]

Title of the Purchasers.

(2) [*or* (3)] As appears from the First Schedule hereto the lands mentioned in the Second Schedule hereto (formerly copyhold of the said manor) are now vested in the Purchasers for an estate in fee simple in possession (subject to the rights reserved to the Lords by the Law of Property Act, 1922, and to the manorial incidents saved by that Act and intended to be hereby extinguished but otherwise free from incumbrances) Upon trust to sell the same and to stand possessed of the net proceeds of sale and of the rents and profits until sale upon the trusts in the said First Schedule referred to :

NOW pursuant, &c. (*as in Prec. No. I*) :

Compensation.

1. (*As in clause* 1 *of Prec. No. I, saying* "Lords" *instead of* "Lord." *The compensation must be paid in a gross sum if there is any personal estate other than chattels real held with the land out of which the money can be paid. Trustees for sale have the statutory powers of a tenant for life : L. P. Act*, 1925, *s.* 28.)

2, 3 and 4. (*As in clauses* 2, 3 *and* 4 *of Prec. No. I, saying* "Lords" *and* "Purchasers" *instead of* "Lord" *and* "Purchaser," *and omitting the undertakings.*)

AS WITNESS, &c.

THE FIRST SCHEDULE.

Statement of the Purchasers' Title.

——19— On this date R. P. was, pursuant to a Surrender of even date, admitted tenant to him and his heirs of the lands mentioned in the Second Schedule.

——19— By his Will of this date the said R. P. appointed the Purchasers to be his executors.

1st January, 1926 By virtue of the Law of Property Act, 1922, the said lands became vested in the said R. P. in fee simple subject to the rights of the Lords and to the said manorial incidents.

—— 1926 The said R. P. died on this date.

—— 1926 His said Will was proved on this date by the Purchasers at the —— Probate Registry.

—— 1927 By an Assent of this date the Purchasers assented to the said lands vesting in themselves in fee simple on trust to sell the same and to stand possessed of the net proceeds of sale and of the rents and profits until sale on the trusts declared concerning the same by the said Will.

[*Add Second and Third Schedules as in Prec. No. I.*]

No. XI.

RECEIPT *for* RENTS, *&c., and for* GROSS SUM. (*To be endorsed on the Compensation Agreement.*)

[*This will be the same as Prec. No. II, supra, save that the word* "Lords" *will be substituted for* "Lord."]

No. XII.

COMPENSATION AGREEMENT *between Lords of the Manor and the persons entitled to land affected by* MANORIAL INCIDENTS, *both being* PERSONAL REPRESENTATIVES. (*Legal Estate.*)

MANOR of —— in the county of ——.

THIS COMPENSATION AGREEMENT is made, &c. (*parties as in Prec. X*): WHEREAS :—

Title of the Lords.

(1) X. Y. died on, &c., being at his death seised of the said manor for an estate in fee simple in possession, having duly made his Will, dated, &c., and thereby appointed the Lords to be his executors, who on the —— day of —— duly proved the said Will at the —— Probate Registry, but have not made any Assent relating to the said manor :

Title of the Purchasers.

(2) As appears from the First Schedule hereto the Purchasers are entitled to the lands described in the Second Schedule hereto (formerly copyhold of the said manor) as personal representatives for an estate in fee simple in possession subject to the rights of

the Lords and to the manorial incidents saved by the Law of Property Act, 1922, and intended to be hereby extinguished, but otherwise free from incumbrances:

[*The operative parts will be the same as Prec. No. X. Personal representatives have the same powers as trustees for sale* (*Ad. of E. Act*, 1925, *s.* 39) *and have power to act in regard to settled land till an assent is made: S. L. Act*, 1925, *s.* 110 (3).]

AS WITNESS, &c.

THE FIRST SCHEDULE.

——19— On this date R. P. was, pursuant to a Surrender of even date, admitted tenant for the lives of certain persons therein named with a perpetual right of renewal according to the custom of the said manor of the lands mentioned in the Second Schedule.

——19— The said R. P. died on this date having by his Will, dated, &c., appointed the Purchasers to be executors thereof.

——19— On this date the said Will was proved by the Purchasers at the —— Probate Registry.

1st January, 1926 By virtue of the Law of Property Act, 1922, section one hundred and thirty-five, the Purchasers became entitled to the said lands for an estate in fee simple in possession (no person having been admitted tenant on the death of the said R. P.), but subject to the rights preserved to the Lords and to the manorial incidents saved by the said Act.(*s*)

[*Add Second and Third Schedules as in Prec. No. I; the endorsement will be in accordance with Prec. No. X.*]

No. XIII.

COMPENSATION AGREEMENT *where* RIGHTS *are granted by the* OWNER *of the* LAND *as part of the* CONSIDERATION *for the* EXTINGUISHMENT. (*Legal Estate.*)

Parties.

(*Parties and recitals as in Precs. Nos. I, IV, VI, VIII, X, XII, as the case may require, a recital may be added of the intention to*

Where personal representatives take in place of devisee or customary heir.

(*s*) On any death after 1925 the enfranchised land will vest in personal representatives: Ad. of E. Act, 1925, ss. 1 and 3. Trust estates in land formerly copyhold pass to the personal representatives in preference to the unadmitted devisee or heir (L. P. Act, 1922, 12th Sch., para. (8) (*b*)), as do perpetually renewable copyholds under s. 135.

grant the rights as part of the consideration. Now, &c., as in Prec. No. I.)

Compensation.

1. (*As in clause* 1 *of Prec. No. I, omitting the reference to the Lord's right to minerals and sporting rights. Add after clause* 1 *the following clause and re-number the subsequent clauses.*)

Grant of rights by the owner of the land.

2. As part of the consideration for the said extinguishment the Purchaser[s] As Beneficial Owner[s] [*or* As Trustee[s] *or* As Personal Representative[s] *as the case requires*] hereby grant unto the Lord[s]

Mining facilities.

FIRST all the mines and minerals (so far as any rights therein may be vested in or capable of being conveyed by the Purchaser[s]) within and under the lands mentioned in the Second Schedule hereto and delineated on the plan hereto and thereon coloured pink and blue TOGETHER with full power, &c. (*continue as in Sec. II*, p. 472, *supra*),

Surface rights.

ALSO with full power to enter on the surface of so much of the land coloured blue on the plan hereto as may be required for the purposes hereinafter mentioned, and to use the same for the following purposes or any of them, namely :—

(a) For the sinking of pits and shafts ;

(b) For making and maintaining mineral railways sidings and other works connected therewith ;

(c) For the erection of coke ovens and other works relating to mining purposes ;

(d) For the erection of cottages and other buildings necessary or convenient to be used in connexion with the said minerals :

(e) For any other purposes (*t*) connected with the winning, manufacturing, carrying away and disposing of the said minerals :

PROVIDED as follows :—

(i) Before exercising the said powers of entry the Purchaser[s] or the persons deriving title under him [them] shall at his [their] own cost :—

(a) Make all necessary arrangements for compensating the tenants and occupiers for all loss to crops, for disturbance and all other claims ;

(b) Make all necessary arrangements with the owners for the time being of the surface to be entered upon for the payment of an occupation rent on an agricultural

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(*t*) See L. P. Act, 1925, s. 162 (1) (*d*), the perpetuity rule does not apply. Perpetuities.

basis for the restoration of the surface after the occupation ceases and for making good all damages :

Provided that all differences in regard to the matters aforesaid shall be submitted to arbitration under the Agricultural Holdings Act or the Arbitration Act or other statutory enactment relating thereto ;(*u*)

(ii) Nothing herein contained shall affect the power conferred by paragraph (5) of the Twelfth Schedule to the Law of Property Act, 1922, on the Purchaser[s] or the persons deriving title under him [them] (in regard to land not from time to time taken under the foregoing power of entry) to disturb or remove the soil so far as is necessary or convenient for the purpose of making roads or drains or erecting buildings or obtaining water on the land ;

Keeper's cottage and sporting facilities.

AND SECONDLY all that piece of land containing —— square yards or thereabouts situated in the parish of ——, in the County of ——, with the Keeper's Cottage [Water Bailiff's Cottage], and other buildings erected on parts thereof, and more particularly delineated on the plan hereto and thereon coloured green ;

AND ALSO full and free right in connexion with the rights of chase or warren, piscaries or other rights of hunting, shooting, fishing, fowling or otherwise taking game, fish or fowl (reserved in paragraph (5) of the Twelfth Schedule to the Law of Property Act, 1922) for the Lord[s], and the persons authorised by him [them] or the persons deriving title under him [them] to use the following rights of access and other rights namely :—

[*Here set out the special rights intended to be granted in addition to those implied by law, see Sec. II*, pp. 471, *et seq.*]

Habendum.

TO HOLD unto the Lord[s] in fee simple.

[*The rest of the Prec. will follow the other Precedents of compensation agreements in this Group, but must be taken under seal in duplicate. If the Lord is a tenant for life the requirements as to subsidiary vesting deeds* (*S. L. Act*, 1925, *s.* 10 ; 1*st Sch., Form No.* 4), *must be complied with. If the Lords are trustees for sale the rights must be conveyed by them on trust for sale.*]

IN WITNESS, &c. [*Add Schedules*].(*v*)

Arbitration.

(*u*) As to arbitration by persons in a fiduciary position : S. L. Act, 1925, s. 58 (1) ; T. Act, 1925, s. 15.

Variations for derivative interests.

(*v*) If the compensation agreement relates to an interest created out of the fee simple (L. P. Act, 1922, s. 142 ; 12th Sch., paras. (2) proviso, (3) proviso, (8) (*c*) (*d*), *ib.*, proviso (i) and (ii)), such interest should be described in the

SECTION IV.

No. I.

NOTICE *by the* OWNER *of the* ENFRANCHISED LAND *to the lord to ascertain the* COMPENSATION *for* EXTINGUISHMENT *of* MANORIAL INCIDENTS.(*a*) (*Legal Estate.*)

MINISTRY OF AGRICULTURE AND FISHERIES.

THE PROPERTY ACTS, 1922 AND 1924.

ASCERTAINMENT *of* COMPENSATION *for* COMPULSORY EXTINGUISHMENT *under the* MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925.

NOTICE FROM TENANT[S] REQUIRING ASCERTAINMENT OF COMPENSATION FOR EXTINGUISHMENT *of* MANORIAL INCIDENTS AFFECTING ENFRANCHISED LAND.

MANOR of —— in the County of ——.

I [WE] C. D., of, &c. [and E. F., of, &c.] hereby give NOTICE

parcels schedule (2nd Sch.) and the recital as to the purchaser's title amended accordingly. The compensation must be paid in a gross sum. See the examples as to working out the compensation in 1 Wolst. and Cherry, 11th ed., Ch. II, 87-9.

Freehold land.

If the manorial incidents affect freehold land, references to the land being formerly copyhold of the manor will be omitted from the compensation agreement.

Notices to ascertain compensation.

(*a*) For the Official Forms see Precedents Nos. III and IV, *infra*. It will facilitate matters if a short statement of the alleged title is added as in the text. Save that a form of endorsement has been prescribed for the purposes of s. 129, no rules have been made for the facilitating the working of L. P. Act, 1922, Pts. V and VI, but the Manorial Incidents (Extinguishment) Rules, 1925, deal with voluntary and compulsory extinguishment of the incidents under the Cop. Act, 1894. It is hoped that, save in cases where the parties cannot be found, these rules may, for practical purposes, be a dead letter, as it is far more satisfactory to all parties that the extinguishment should be effected by a compensation agreement, apart from the Act of 1894, than by resorting to the Ministry of Agriculture. Moreover, the Minister has power to assist the parties to arrive at compensation agreements: s. 13 (9); the Minister will not entertain applications unless satisfied that this course is convenient: *ib.*, (3).

By whom and to whom notices may be given.

As a general rule the notices will be given by and will be served on the same persons who would be proper parties to the compensation agreement. See definitions of "Lord" and "Tenant" in ss. 143 and 189. There is, however, a question whether a mortgagee of the land whose power of sale has become exercisable can serve a notice until—

When mortgagee of land can serve notice.

(i) He actually sells, when he can concur with the purchaser in serving the notice, for the right of redemption is lost by the sale; or

(ii) He bars the equity of redemption by foreclosure; or

(iii) He does the like by acquiring title under the Limitation Acts.

The same question does not appear to arise in the case of a mortgagee of the manor.

Who will generally serve the notice.

Failing a compensation agreement, the owner of the land will generally serve the notice, for it will be for his advantage to extinguish the incidents

that I [we] claim to be entitled to the lands mentioned in the Schedule endorsed hereon as —— (*here state whether as absolute owners, as tenants for life, as statutory owners, as trustees for sale (with the concurrence of any person whose consent is as regards a purchaser requisite to the execution of the trust for sale), as personal representatives, as purchasers from a mortgagee with his concurrence, as mortgagees after the right of redemption is barred or otherwise as the case requires*) and do hereby pursuant to the Property Acts, 1922 and 1924, require the ascertainment of the compensation for the extinguishment of the Manorial Incidents affecting the lands described in the Schedule endorsed hereon, which prior to the 1st January, 1926, were (copyhold) (customary freehold) [*strike out words inapplicable*] of the above Manor and as such were enfranchised by virtue of the said Acts.

Dated this —— day of —— 19—.(*b*)

—— Signature[s].

To —— of ——, Lord or Steward of the Manor and all others whom it may concern.

THE SCHEDULE.

Description of the land affected by the Manorial Incidents.

[*Note.—The description should be taken from the court rolls with a modern description referring to a plan based on the ordnance survey to enable the land to be identified wherever this is practicable. The notice should be signed by the owners or by their agents under a power of attorney in which case the power must be produced to the Minister.*]

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and the costs will usually be borne by him. Even if a notice has been served the parties can enter into a compensation agreement before the ten years have expired, provided that the compensation has not been ascertained under the notice: s. 139 (1) (ix), proviso.

Service of notice.

(*b*) The service of the notice is governed by s. 57 of the Cop. Act, 1894, and L. P. Act, 1925, s. 196: L. P. Act, 1922, s. 143 (3). It should be served in duplicate and a receipt obtained for the duplicate. It may either be served in person or by registered post. A copy of the notice must be forwarded to the Secretary, Ministry of Agriculture and Fisheries, 10, Whitehall Place, London, S.W.1, with an endorsement stating when and how the original notice was served.

Effect of service.

The effect of due service is to extinguish the manorial incidents affecting the land to which the notice relates: *ib.*, s. 138 (1) (*b*).

No. II.

NOTICE *by the* LORD *of the* MANOR *to the* OWNER *of the* ENFRANCHISED LAND *to ascertain the* COMPENSATION *for* MANORIAL INCIDENTS.(*c*) (*Legal Estate.*)

MINISTRY OF AGRICULTURE AND FISHERIES.

THE PROPERTY ACTS, 1922 AND 1924.

ASCERTAINMENT *of* COMPENSATION *for* COMPULSORY EXTINGUISHMENT *under the* MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925.

NOTICE FROM LORD REQUIRING ASCERTAINMENT OF COMPENSATION FOR EXTINGUISHMENT OF MANORIAL INCIDENTS AFFECTING ENFRANCHISED LAND.

I [WE], C. D., of, &c. [and E. F., of, &c.], hereby give NOTICE that I [we], claim to be entitled to the said manor as —— (*here state whether as absolute owners* (*with or without the concurrence of mortgagees*), *as tenants for life, as statutory owners, as trustees for sale* (*with the concurrence of any person whose consent is as regards a purchaser requisite to the execution of the trust for sale*), *as personal representatives, as mortgagees whose power of sale has become exercisable, or otherwise as the case requires*), and do hereby, pursuant to the provisions of the Property Acts, 1922 and 1924, require the ascertainment of the compensation for the extinguishment of manorial incidents affecting the lands described in the Schedules endorsed hereon, which prior to 1st January, 1926, were (copyhold) (customary freehold)

(*c*) See notes to last Precedent. The lord cannot serve a notice till after the end of five years from 1st January, 1926: L. P. Act, 1922, s. 138 (1) (*b*). If the notice relates to one tenement and other tenements are held by the same owner for the same estate and subject to the same trusts and incumbrances (if any), the owner may by a counter-notice in writing to the lord, require the extinguishment to be effected in respect of all or any of the tenements, as if the same had been included in one notice. A copy of the notice must be forwarded to the Secretary, Ministry of Agriculture and Fisheries, 10, Whitehall Place, London, S.W.1, with an endorsement stating when and how the original notice was served. Counter-notice. Prescribed forms.

Other forms applicable to cases which come before the Minister will be found in the Schedules to the Manorial Incidents (Extinguishment) Rules, 1925; further forms can be obtained from the Ministry.

[*strike out words inapplicable*] of the above manor and as such were enfranchised by virtue of the said Acts.

Dated this —— day of ——, 19—.(*d*)

—— Signature[s]

To —— of ——owner[s] of the lands described in the Schedule endorsed hereon and to all others whom it may concern.

[*Schedule, see last Prec.*]

No. III.

MINISTRY OF AGRICULTURE AND FISHERIES.

THE PROPERTY ACTS, 1922 AND 1924.

ASCERTAINMENT *of* COMPENSATION *for* COMPULSORY EXTINGUISHMENT *under the* MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925.

NOTICE FROM TENANT REQUIRING ASCERTAINMENT OF COMPENSATION FOR EXTINGUISHMENT OF MANORIAL INCIDENTS AFFECTING ENFRANCHISED LAND.

MANOR OF —— in the County of ——

I ——, of ——, in the Parish of ——, in the County of ——, do hereby, pursuant to the provisions of the Property Acts, 1922 and 1924, require the ascertainment of the compensation for the extinguishment of manorial incidents affecting the lands described in the Schedule endorsed hereon, which prior to the 1st January, 1926, were (copyhold) (customary freehold) [*strike out words inapplicable*] of the above manor and as such were enfranchised by virtue of the said Acts.

Dated —— this day of —— 192—.

——Signature.

To —— of —— Lord or Steward of the Manor.

Schedule. [*To be endorsed. This is an official form.*]

NOTE.—*A copy of this Notice should be forwarded to the Secretary, Ministry of Agriculture and Fisheries, 10, Whitehall Place, London, S.W.1, with an endorsement stating when and how the original notice was served.*

Identity of land, and furnishing information.

(*d*) If the true owners are not known the notice can be served by fixing the same on the premises: Cop. Act, 1894, s. 57. If the identity of the land cannot be otherwise established, this can be done under an order of the Minister (L. P. Act, 1922, s. 139 (1) (vii)); but the parties are bound to furnish any plans or other information in their possession: s. 139 (1) (i).

No. IV.

MINISTRY OF AGRICULTURE AND FISHERIES.

THE PROPERTY ACTS, 1922 AND 1924.

ASCERTAINMENT *of* COMPENSATION *for* COMPULSORY EXTINGUISHMENT *under the* MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925.

NOTICE FROM TENANT REQUIRING ASCERTAINMENT OF COMPENSATION FOR EXTINGUISHMENT OF MANORIAL INCIDENTS AFFECTING LANDS OTHER THAN ENFRANCHISED LANDS.

MANOR OF —— in the County of ——.

I ——, of ——, in the Parish of ——, in the County of ——, do hereby, pursuant to the provisions of the Property Acts, 1922 and 1924, require the ascertainment of the compensation for the extinguishment of the [*insert heriot, quit rents or free rents as the case may be*] or other manorial incident affecting the lands, shortly described in the Schedule endorsed hereon.

Dated this —— day of ——, 192—.

——Signature.

To —— of —— Lord or Steward of the Manor.

NOTE.—*A copy of this Notice should be forwarded to the Secretary, Ministry of Agriculture and Fisheries, 10, Whitehall Place, London, S.W.1., with an endorsement stating when and how the original notice was served.*

[*Schedule to be endorsed. This is an official form and would apply to reliefs payable by owners of the fee simple as well as to heriots and rents.*]

No. V.

MINISTRY OF AGRICULTURE AND FISHERIES.

THE PROPERTY ACTS, 1922 AND 1924.

ASCERTAINMENT *of* COMPENSATION *for* COMPULSORY EXTINGUISHMENT *of* MANORIAL INCIDENTS *under the* MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925.

APPOINTMENT OF VALUER BY LORD AND TENANT.

MANOR OF ——, in the County of ——.

—— Extinguishment.

We, ——, of ——, in the County of ——, and ——, of ——, n the County of ——, in pursuance of the provisions of the

Manorial Incidents (Extinguishment) Rules, 1925, hereby appoint ——, of ——, in the County of ——, to be the valuer for the purpose of determining the compensation for the extinguishment of the manorial incidents affecting the lands comprised in a Notice requiring the ascertainment of such compensation given by —— and dated on or about the —— day of ——, 192—.

Dated this —— day of ——, 192—.

} *Signatures.*

NOTE.—*A copy of this Appointment should be sent to the Secretary, Ministry of Agriculture and Fisheries, 10, Whitehall Place, London, S.W.1. Not more than one valuer may be appointed.*

No. VI.

MINISTRY OF AGRICULTURE AND FISHERIES.

THE PROPERTY ACTS, 1922 AND 1924.

ASCERTAINMENT *of* COMPENSATION *for* COMPULSORY EXTINGUISHMENT *of* MANORIAL INCIDENTS *under the* MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925.

APPOINTMENT OF VALUER BY MINISTER.

MANOR OF ——, in the County of ——.
—— Extinguishment.

WHEREAS in the Matter of the above Extinguishment the lord and tenant have failed to agree upon the appointment of a valuer:

NOW THEREFORE the Minister of Agriculture and Fisheries, in pursuance of the Manorial Incidents (Extinguishment) Rules, 1925, hereby appoints ——, of ——, in the County of ——, to be the valuer for the purpose of determining the amount of compensation for the extinguishment of the manorial incidents affecting the lands comprised in a Notice requiring the ascertainment of such compensation given by —— and dated on or about the —— day of ——, 192—.

Dated, &c.

No. VII.

MINISTRY OF AGRICULTURE AND FISHERIES.

THE PROPERTY ACTS, 1922 AND 1924.

ASCERTAINMENT *of* COMPENSATION *for* EXTINGUISHMENT *of* MANORIAL INCIDENTS *under the* MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925.

DECISION OF VALUER.

MANOR OF——in the County of——

—— Extinguishment.

IN THE MATTER of the above ascertainment of compensation for extinguishment under the Manorial Incidents (Extinguishment) Rules, 1925.

I,(*e*) —— of —— in the County of —— having been duly appointed to determine the compensation to be paid for the extinguishment of manorial incidents affecting the lands in the schedule hereunder written and comprised in the notice requiring the ascertainment of such compensation given by —— dated on or about the —— day of ——— 19 , do hereby in pursuance of the Manorial Incidents (Extinguishment) Rules, 1925, determine and decide as follows: that is to say—

I DETERMINE AND DECIDE that the compensation to be paid for the extinguishment of manorial incidents affecting the said land under the said Rules is the sum of (*f*) —— together with interest on such sum at the rate of five and a half pounds per cent. half-yearly from the date of the notice requiring the ascertainment of the compensation to the date of payment of the compensation, unless the compensation is paid by way of an annual terminable rentcharge under the said Rules being the value of all the manorial incidents affecting the said lands excepting the rights reserved by the Twelfth Schedule to the Law of Property Act, 1922, and excepting the value of the right of escheat.

WITNESS my hand this —— day of —— One thousand nine hundred and ——.

Signature of Valuer.

THE SCHEDULE hereinbefore referred to.(*g*)

(*e*) Insert name and address of valuer.

(*f*) The compensaton determined is to be a gross sum of money.

(*g*) The court roll description as at the date of the last admittance or enrolment should be given in the schedule; and, in addition, the modern description of the parcels, if such a description be agreed upon.

The schedule, as well as the decision, should be signed by the valuer.

No. VIII.

MINISTRY OF AGRICULTURE AND FISHERIES.

THE PROPERTY ACTS, 1922 AND 1924.

ASCERTAINMENT *of* COMPENSATION *for* COMPULSORY EXTINGUISHMENT *under the* MANORIAL INCIDENTS (EXTINGUISHMENT) RULES, 1925.

EXTENSION OF TIME.

MANOR OF —— in the County of ——
——Extinguishment.

WHEREAS application has been made to the Minister of Agriculture and Fisheries to extend the time allowed by the Manorial Incidents (Extinguishment) Rules, 1925, to the valuer for making his decision.

NOW THEREFORE the Minister of Agriculture and Fisheries having duly considered the grounds of the said application, by virtue of the powers vested in him by the Copyhold Act, 1894, as modified and applied by Part VI of the Law of Property Act, 1922, hereby extends the time within which the valuer may make his decision to the —— day of —— 19—.

IN WITNESS whereof the Official Seal of the Minister of Agriculture and Fisheries has been hereunto affixed, this —— day of —— 19—.

SECTION V.

DEEDS FOR ENLARGING TERMS AND FOR ACQUIRING ESTATES FORMERLY VESTED IN MORTGAGORS.(*a*)

No. I.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a person* ABSOLUTELY ENTITLED *thereto.*(*b*) (*Legal Estate.*)

THIS ENLARGEMENT DEED is made this, &c., by A. B., of, &c.: WHEREAS:—

Demise for long term subject to nominal rent.

(1) By a Lease, dated, &c., and made, &c., ALL, &c. (*parcels*

The declaration of the valuer should be annexed.

The decision should be forwarded to the Secretary, Ministry of Agriculture and Fisheries, 10, Whitehall Place, London, S.W.1. A copy should be sent to the steward, and to the tenant or his solicitor, and the Ministry should be informed that this has been done when the decision is sent in.

Registered land.

(*a*) All the Precedents in this section apply to long terms registered as leasehold or entered as incumbrances, or by way of notice against the freehold or superior lease. No express provision is made in the L. R. Act,

as in recited deed), were demised unto the said —— from the —— day of —— for a term of 1,000 years thence next ensuing at a peppercorn rent:

(2) After divers mesne assignments and acts in the law, ultimately under an Assignment, dated, &c., and made, &c., the premises became vested in the said A. B. for the residue of the said term, which is not liable to be determined by re-entry for condition broken: Mesne assignments.

NOW THIS DEED WITNESSETH that the said A. B., by virtue of section one hundred and fifty-three of the Law of Property Act, 1925, hereby declares that the said term of 1,000 years shall from and after the execution of this Deed, as to all the premises therein comprised, be and the same is hereby enlarged into a fee simple. Enlargement by owner of term into fee simple.

IN WITNESS, &c.

No. II.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a* MORTGAGEE *who has become* ABSOLUTE OWNER *under the* LIMITATION ACTS; VARIATIONS *where a* CHARGEE *by way of* LEGAL MORTGAGE *vests the* FEE SIMPLE *in* HIMSELF *the right of redemption being barred by those* ACTS. (*Legal Estate.*)(*c*)

THIS ENLARGEMENT DEED [VESTING DEED] is made, &c., by A. B., of, &c.: WHEREAS:—

(1) By a Mortgage dated, &c., and made between L. M. of the one part, and the said A. B. of the other part, certain property in the Parish of ——, in the County of ——, was Mortgage for long term.

1925, or in the L. R. R., 1925, for these conversions. The deed should be lodged in the registry with an application to note the determination of the lease, and for the entry of a freehold title: see rr. 200 to 209.

(*b*) See L. P. Act, 1925, s. 153; the term must originally have been limited for not less than 300 years and must have not less than 200 years to run; there must be no subsisting trust or right of redemption in favour of the reversioner; the rent (if any) must have no money value, but a yearly rent not exceeding £1 which has not been collected or paid for 20 years or upwards, of which five must elapse after 1925, is deemed to have ceased to be payable: *ib.* The term must not be liable to be determined by re-entry for condition broken, nor must it take effect by sub-demise out of a superior term which itself is not capable of enlargement: *ib.* See *Blaiberg* v. *Keeves* [1906], 2 Ch. 175; 75 L. J. Ch. 464; also 49 Sol. J. 818. The deed should be stamped 10*s.* Requirements. Stamp.

(*c*) See L. P. Act, 1925, ss. 88 (3), 153. If the title commences with a charge by way of legal mortgage the recitals must be varied, but until 1937 it will not be possible for a person interested under such a charge to acquire title under the Limitation Acts.

demised by the said L. M. (being then seised in fee simple) to the said A. B. for the term of 500 years from the date thereof without impeachment of waste by way of mortgage for securing payment by the said L. M. to the said A. B. of the sum of £400 and interest as therein mentioned:

Deed converting mortgage term into legal charge.

[(2) By a Deed of Conversion, dated, &c., under the hand and seal of the said A. B. in exercise of the power for this purpose conferred on him by section eighty-seven of the Law of Property Act, 1925, he declared that the recited mortgage should be thereby converted into a charge by way of legal mortgage:]

Mortgage debt was not paid; mortgagee took possession and acquired absolute title to term by possession.

(2) *or* (3) No part of the said mortgage debt of £400 having been paid, the said A. B. entered into possession of the said property in the year ——, and has ever since remained in uninterrupted possession and enjoyment thereof, without having acknowledged the title of the said L. M. or any other person to any right of redemption, and the said A. B. consequently became the absolute owner of the premises for the residue of the said term of 500 years:

Enlargement of the said term by mortgagee who has become absolute owner into fee simple.

NOW THIS DEED WITNESSETH that the said A. B., by virtue of section one hundred and fifty-three of the Law of Property Act, 1925, hereby declares that the said term of 500 years shall from and after the execution of this Deed, as to all the premises therein comprised, be and the same is hereby enlarged into a fee simple.

[Variation in case of legal charge.]

[*Or, if a legal charge is subsisting*, the said A. B., by virtue of section eighty-eight of the Law of Property Act, 1925, hereby declares that the fee simple in the premises comprised in or affected by the recited mortgage [and Deed of Conversion] is hereby vested in him discharged from any legal mortgage affected by the title acquired by him under the Limitation Acts.]

IN WITNESS, &c.

No. III.

VESTING DEED *by a* MORTGAGEE *of* LEASEHOLDS, *under L. P. Act*, 1925, *s.* 89, *for acquiring the leasehold reversion, the right of redemption having been barred under the* LIMITATION ACTS. (*Legal Estate.*)

THIS VESTING DEED is made this —— day of —— 19—, by A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees): WHEREAS:—

Lease.

(1) By a Lease, dated, &c., and made, &c., All and singular (*parcels*) were demised by the said X. to the said Y. for the term

of —— years from the —— day of —— (hereinafter called the head term) at the yearly rent of £——and subject to the lessee's covenants and conditions therein contained :

Mortgage by sub-demise.

(2) By a Mortgage, dated, &c., and made between the said Y. of the one part and the Mortgagees of the other part, the premises comprised in the said Lease were demised to the Mortgagees for a term less by one day than the head term by way of mortgage for securing payment to the Mortgagees of the principal sum of £—— on a day therein mentioned and since passed with interest thereon as therein mentioned :

[Charge by way of legal mortgage.]

[*or* (2) By a Legal Charge, dated, &c., and made between the said Y. of the one part and the Mortgagees of the other part, the said Y. charged by way of legal mortgage the premises comprised in the said Lease with the payment to the Mortgagees of the principal sum of £—— on a day therein mentioned and since passed (being the date on which the legal right of redemption ceased) with interest thereon as therein mentioned :]

Mortgagees take possession and acquire title.

(3) No part of the said mortgage debt having been paid, the Mortgagees entered into possession of the premises comprised in the said Lease in the year —— and have ever since duly paid the said rent and remained in uninterrupted possession and enjoyment of the premises, without having acknowledged the title of the said Y. or the persons deriving title under him, and accordingly all right of redemption under the recited Mortgage [Legal Charge] has become barred :

NOW THIS DEED WITNESSETH that the Mortgagees by virtue of section eighty-nine of the Law of Property Act, 1925, hereby declare as follows :—

Vesting of leasehold reversion.

1. THAT the head term (being the leasehold reversion affected by the recited Mortgage [Legal Charge]) and any mortgage term affected by the title so acquired under the Limitation Acts shall vest in the Mortgagees free from any right of redemption which is barred as aforesaid, and the said term or terms shall (without giving rise to any forfeiture for want of a licence to assign) vest accordingly.

Merger of mortgage terms.

2. THAT in accordance with the said section all mortgage terms and charges by way of legal mortgage affected by the title so acquired under the Limitation Acts shall merge in the head term hereby acquired or be extinguished.

IN WITNESS, &c.

No. IV.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a* MARRIED WOMAN *having an* INTEREST *for* LIFE *without* POWER *of* ANTICIPATION.(*d*) (*Legal Estate.*)

THIS ENLARGEMENT AND SUBSIDIARY VESTING DEED dated, &c., is made by A. B., the wife of C. B., of, &c., of the one part, and P. Q., of, &c., and R. S., of, &c. (hereinafter called the Trustees), of the other part: WHEREAS:—

Lease for —— years.

(1) (*Recite lease for —— years*):

Will of owner of term.

(2) N. O., late of, &c., having become entitled to the premises for the residue of the said term, duly made his Will dated the —— day of ——, and thereby gave all his real and personal estate to the Trustees Upon trust for the testator's daughter, the said A. B., during her life, without power of anticipation, with remainders over And the said testator appointed the Trustees to be the executors of his Will and trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890:

Death and probate.

(3) The said testator died, &c., and his said Will was on the, &c., duly proved at the —— Probate Registry by the Trustees:

Vesting provisions.

(4) By virtue of the Law of Property Act, 1925, 1st Schedule, Part II, the said term became vested in the said A. B. on the trusts of the recited Will:

Principal vesting deed.

(5) By a Principal Vesting Deed (hereinafter called the Principal Deed), dated, &c., and made between the Trustees of the one part and the said A. B. of the other part for giving effect to the requirements of the Settled Land Act, 1925, the Trustees declared that the premises were vested in the said A. B. for the residue of the said term of —— years and she declared that she would stand possessed thereof on the trusts and subject to the powers and provisions upon and subject to which under the recited Will or otherwise the same ought to be held And it was thereby declared that the Trustees were the trustees of the settlement for the purposes of the Settled Land Act, 1925, that no additional powers relating to the settled land were conferred by the said Will, and that it did not contain any express powers to appoint new trustees thereof:

Persons having power to enlarge.

(*d*) As to the persons who have power to enlarge terms (L. P. Act, 1925, s. 153 (6)), the husband is not a necessary party whether or not the wife is entitled to the term for her separate property; the restraint on anticipation does not affect her power: *ib.* Before 1926 it was necessary for the husband to join if the term did not belong to the wife as her separate property, but there was no need for an acknowledgment. And see next Precedent and notes thereto.

NOW THIS DEED WITNESSETH as follows :—

1. THE said A. B., by virtue of section one hundred and fifty-three of the Law of Property Act, 1925, hereby declares that the said term of —— years shall from and after the execution of this deed as to all the premises therein comprised be and the same is hereby enlarged into a fee simple. Enlargement by married woman of term into fee simple.

2. THE said A. B. hereby declares that she will stand possessed of the premises so enlarged into a fee simple Upon and subject to the trusts and powers declared by the Principal Deed by reference as aforesaid with respect to the premises comprised in the recited Lease. Declaration of trust.

3. THE Trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925. S. L. Act trustees.

[4. *If the Will so provides add :* The power of appointing a new trustee or new trustees of the settlement is vested in the said A. B. during her life.]

IN WITNESS, &c.

No. V.

DEED *to* ENLARGE *a* LONG TERM *as to* PART *of the* DEMISED PROPERTY *by the* TENANT FOR LIFE *of* SETTLED LAND. (*Legal Estate.*)

THIS ENLARGEMENT AND SUBSIDIARY VESTING DEED is made, &c., BETWEEN A. B., of, &c. (*tenant for life*), of the one part, and X., of, &c., and Y., of, &c. (hereinafter called the Trustees), of the other part : WHEREAS :—(*Recite deed creating portions term of* 1,000 *years ; Mortgage of same to C. D.*; *Order for foreclosure ; Principal Vesting Deed of other land in favour of A. B. in which the Trustees are named as S. L. Act trustees ; Subsidiary Vesting Deed (hereinafter called the Assignment), being an assignment on a sale by C. D. of part of the premises comprised in the term to the said A. B. on the trusts declared by the Principal Vesting Deed by reference*).(*e*) Parties.

(6) The said A. B. is a person beneficially entitled in right of the term comprised in the Assignment to the possession of the land therein mentioned as well as being a trustee in receipt of income in right of that term by virtue of the Assignment: Title to income.

(7) The ultimate beneficial interest in the premises comprised in the Assignment has not become absolutely and indefeasibly No remainderman has attained an indefeasible interest.

(*e*) It is assumed that the order for foreclosure was made before 1926, hence it did not get in the fee simple under L. P. Act, 1925, s. 88 (2).

vested in any person nor has any notice been received of any conveyance for value having been made by a person having a contingent or defeasible interest in the term:(*f*)

NOW THIS DEED WITNESSETH as follows:—

Enlargement of term.

1. THE said A. B., as the person so beneficially entitled, hereby declares that from and after the execution of this deed the said term of 1,000 years shall (so far as regards the lands comprised in the Assignment) be and the same is hereby enlarged into a fee simple.

Declaration of trust.

2. THE said A. B. hereby declares that he will hold the fee simple so acquired upon and subject to the same trusts and powers as are declared by the recited Principal Vesting Deed by reference as aforesaid with respect to the freehold lands therein comprised. [*Add the following if the remainderman has become indefeasibly entitled to the term* "but without prejudice to the rights of any remainderman who before the date hereof may have become absolutely and indefeasibly entitled to the said term free from charges or powers of charging created by a settlement.]

S. L. Act trustees.

3. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act, 1925.

Power to appoint.

[4. *If the case add* The power of appointing a new trustee or new trustees of the Settlement is vested in the said A. B. during his life.]

IN WITNESS, &c.

No. VI.

DEED *to* ENLARGE *a* LONG TERM *into a* FEE SIMPLE *by* EXECUTORS *of* DECEASED OWNER *as to* PART *of the* DEMISED PROPERTY *subject to* INCUMBRANCES. (*Legal Estate.*)

THIS ENLARGEMENT DEED is made, &c., by X., of, &c., and Y., of, &c.: WHEREAS:—

That deed supplemental to assignment to testator.

(1) This deed is supplemental to an Assignment (hereinafter called the Principal Deed), dated, &c., and made between M.

(*f*) If the term has not become indefeasibly vested free from family charges in a remainderman the fee simple will under L. P. Act, 1925, s. 153 (9), go with the other freehold land, but without prejudice to any conveyance for value previously made. If it has become indefeasibly vested the trusts should be slightly varied, but in any case a subsidiary vesting deed is required.

of the one part and A. B. (since deceased) of the other part, whereby All those, &c. (*short description*), were assigned unto the said A. B. for the residue of a term of 500 years created therein (and also in other lands) by a Lease, dated, &c., and made, &c., at a peppercorn rent payable in respect of all the demised premises:

Death of testator and appointment of executors.

(2) The said A. B. died on, &c., being at his death entitled to the premises comprised in the Principal Deed for the residue of the said term subject to the incumbrances created by him and mentioned in the Schedule hereto, and having by his Will, dated, &c., appointed the said X. and Y. executors thereof, who proved the same in the —— District Probate Registry on, &c. And the said term of 500 years is now vested in the said X. and Y., as the Personal Representatives of the said A. B., so far as regards the premises comprised in the Principal Deed, subject only to the incumbrances mentioned in the Schedule hereto:

Enlargement by executors.

NOW THIS DEED WITNESSETH that the said X. and Y., as such Personal Representatives as aforesaid, do and each of them doth hereby declare that from and after the execution hereof the said term of 500 years shall, so far as regards the premises comprised in the Principal Deed, be and the same is hereby enlarged into a fee simple.(*g*)

IN WITNESS, &c. (*Add Schedule of incumbrances.*)

No. VII.

DEED *to* ENLARGE *a* LONG TERM *into a* FEE SIMPLE *by* TRUSTEES *for* SALE. (*Legal Estate.*)

THIS ENLARGEMENT DEED is made, &c., by X., of, &c., and Y., of, &c. (hereinafter called the Trustees): WHEREAS:—

Conveyance on trust for sale.

(1) By a Conveyance, dated, &c., and made, &c. All those, &c., (*parcels*) were assigned to the Trustees for the residue of a term of —— years from the —— day of —— created by —— (*state the Will or Settlement creating the term*), for raising portions which were duly raised by a Mortgage, dated, &c., but at the date of the said Conveyance the right of redemption thereunder had become barred as therein mentioned: And by the said Conveyance the

(*g*) Under L. P. Act, 1925, s. 153 (7), (8), the fee simple vests in the personal representatives as such, subject to the mortgage terms and charges by way of legal mortgage mentioned in the schedule; the fee simple becomes the reversion expectant on the mortgage terms.

Trustees were directed to stand possessed of the said term Upon trust to sell the same and to stand possessed of the net proceeds of sale and of the rents and profits until sale on the trusts therein referred to:

Trustees in receipt of income.

(2) The said term remains vested in the Trustees who are in receipt of the income thereof:

NOW THIS DEED WITNESSETH as follows:—

Enlargement by trustees for sale.

1. THE Trustees as such trustees as aforesaid do and each of them doth hereby declare that from and after the execution hereof the said term of —— years shall, so far as regards the premises comprised in the recited Conveyance, be and the same is hereby enlarged into a fee simple.

Trust for sale.

2. PURSUANT to section one hundred and fifty-three of the Law of Property Act, 1925, the Trustees hereby declare that they hold the fee simple so acquired by them UPON TRUST to sell the same and to stand possessed of the net proceeds of sale and of the rents and profits until sale on the trusts referred to in the recited Conveyance.

IN WITNESS, &c.(*h*)

Minerals.

(*h*) The mines and minerals pass unless they have been severed at the time of the enlargement deed or have been reserved by an Inclosure Act or award: L. P. Act, 1925, s. 153 (10).

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